



VarTec Telecom, Inc.

November 1, 2005

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VIA OVERNIGHT DELIVERY

Ms. Sharla Dillon

Docket Room Manager

Tennessee Regulatory Authority

460 James Robertson Parkway

Nashville, Tennessee 37243-0505

Re. Response to Data Request No. 1; Docket No. 05-00287

Dear Ms. Dillon:

Transmitted herewith on behalf of Comtel Telcom Assets LP ("Comtel") and VarTec Telecom, Inc., Excel Telecommunications, Inc. and VarTec Solutions, Inc. (together, the "VarTec Companies") (collectively with Comtel, the "Applicants") are 13 copies of this response to TRA Staff's Data Request No. 1 issued in the above-noted docket on October 26, 2005. Below please find the Applicants' response to each of the inquiries posed by TRA Staff:

1. Tenn. Code Ann. § 65-4-113 warrants the TRA's review and approval of the Application.
2. Applicants have made similar filings in other states and are in the process of making all required filings throughout the United States. To date, the Applicants have filed applications, notices, etc. in the following states:

Pending State Filings: Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Louisiana, Michigan, North Carolina, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington and Wisconsin

Approved State Filings. New York (granted by operation of law effective December 16, 2005)

3. The Applicants have made a similar filing with the Federal Communications Commission ("FCC"). Copies of the FCC's approvals are attached hereto as Exhibit 1.
4. Comtel currently has no customers in Tennessee or elsewhere; however, as described in the Application filed in this Docket, Comtel is planning to obtain the customers of the VarTec Companies upon consummation of the transaction. The customer totals for VarTec, Excel and VarTec Solutions are attached as Exhibit 2. In addition, the VarTec Companies have submitted a Motion for Protective Order and Protection of Proprietary Information as Exhibit 3 with this response due to the confidential nature of the information contained in Exhibit 2.

5. Pursuant to the Asset Purchase Agreement between Comtel and the VarTec Companies, it is anticipated that all of the VarTec Companies' existing customers will be transferred to Comtel upon consummation of the transaction.
6. Upon consummation of the transaction with Comtel, the VarTec Companies intend to cease providing all telecommunications services in Tennessee and elsewhere. In addition, the Application requests that the VarTec Companies' operating authority be transferred to Comtel
7. The requested customer notice is not yet available but will be provided to the TRA once finalized.
8. The certificates for the VarTec Companies are attached hereto as Exhibit 4.
9. Once the transaction is approved by the TRA and consummated, Comtel intends to provide telecommunications services within Tennessee under the certificates and authority transferred by the VarTec Companies, and Comtel will also operate under its registration currently on file with the Tennessee Secretary of State. As noted above, the VarTec Companies will no longer provide telecommunications services, and they will be seeking to withdraw their authority with the Tennessee Secretary of State after consummation of the transaction.
10. Comtel's organizational chart is on file with the TRA as Exhibit B to the Application. This chart is not expected to change as a result of this asset sale transaction. The organizational chart for the VarTec Companies is attached hereto as Exhibit 5, and this structure will also not be impacted by the transaction.
11. Attached as Exhibit 6, please find the signed verification from Comtel.
12. In addition to the items requested in Data Request No. 1, TRA Staff has also requested a copy of the Asset Purchase Agreement associated with this transaction. This document is attached as Exhibit 7 and is provided in both paper and electronic formats

Acknowledgment and date of receipt of this filing is respectfully requested. Please date and file stamp the attached return copy of this correspondence and return it in the enclosed pre-addressed, postage-prepaid envelope. Please direct all correspondence regarding this filing to the undersigned directly at (972) 478-3309, the above-referenced address or bgipson@vartec.net
The Applicants sincerely appreciate your time and consideration in reviewing this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Becky Gipson", with a large, stylized flourish extending to the right.

Becky Gipson
Director, Regulatory Affairs

Enclosures

cc: Jeffrey Marks, Jessica Hafer, Counsel for Comtel Telcom Assets LP

EXHIBIT 1

FEDERAL COMMUNICATIONS COMMISSION APPROVALS



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET S.W.
WASHINGTON D.C. 20554

News media information 202-418-0500
Fax-On-Demand 202-418-2830, Internet <http://www.fcc.gov> (or <ftp://ftp.fcc.gov>)
TTY (202) 418-2555

DA No. 05-2416

Report No. TEL-00944

Thursday September 8, 2005

INTERNATIONAL AUTHORIZATIONS GRANTED

Section 214 Applications (47 C.F.R. § 63.18); Section 310(b)(4) Requests

The following applications have been granted pursuant to the Commission's streamlined processing procedures set forth in Section 63.12 of the Commission's rules, 47 C.F.R. § 63.12, other provisions of the Commission's rules, or procedures set forth in an earlier public notice listing applications accepted for filing.

Unless otherwise noted, these grants authorize the applicants (1) to become a facilities-based international common carrier subject to 47 C.F.R. § 63.22, and/or (2) to become a resale-based international common carrier subject to 47 C.F.R. § 63.23, or (3) to exceed the 25 percent foreign ownership benchmark applicable to common carrier radio licensees under 47 U.S.C. § 310(b)(4).

THIS PUBLIC NOTICE SERVES AS EACH NEWLY AUTHORIZED CARRIER'S SECTION 214 CERTIFICATE. It contains general and specific conditions, which are set forth below. Newly authorized carriers should carefully review the terms and conditions of their authorizations. Failure to comply with general or specific conditions of an authorization, or with other relevant Commission rules and policies, could result in fines and forfeitures.

An updated version of Sections 63.09–25 of the rules, and other related sections, is available at <http://www.fcc.gov/ib/pd/pf/telecomrules.html>

American Samoa License, Inc ("ASL" or the "Petitioner") requests a declaratory ruling that it is in the public interest to permit the indirect foreign ownership of ASL in excess of the 25 percent benchmark set forth in section 310(b)(4) of the Communications Act of 1934, as amended (the "Act"). ASL holds a broadband PCS license for American Samoa (MTA051). This request is filed in connection with an application for consent to the transfer of de jure control of the PCS radio license from R. Allen Stanford to the shareholders of eLandia Solutions, Inc ("ESI"). See File No. 0002184665.

According to the petition, ASL is 100 percent owned by AST Telecom, LLC, a U.S. limited liability company ("AST"). W&R South Pacific, L.P. ("WSPLP"), a limited partnership organized under the laws of Washington State, holds 30.72 percent of AST. The remaining 69.28 percent of AST is held by Stanford International Bank Limited ("SIBL"), a company organized under the laws of Antigua and Barbuda. WSPLP is owned and controlled by Barry and Fay Alailima Rose through W&R, Inc., an American Samoa corporation. SIBL, in turn, is wholly-owned by Stanford International Bank Holdings Limited ("SIBHL"), which is organized under the laws of Antigua and Barbuda. SIBHL is 100 percent owned by the Stanford Financial Group, a U.S. company that is wholly-owned and controlled by R. Allen Stanford, a U.S. citizen (who also holds citizenship of Antigua and Barbuda). The Commission previously approved the insertion of SIBL and SIBHL into the ownership chain, under section 310(b)(4) of the Act, on August 3, 2005. See International Authorizations Granted, Public Notice, DA 05-2254, rel. Aug. 4, 2005 (File No. ISP-PDR-20050727-00007).

Upon consummation of a series of transactions, the indirect ownership interest of R. Allen Stanford and Barry and Fay Alailima Rose will decline from 69.28 percent to 43.80 percent and from 30.72 percent to 11.10 percent, respectively. The remaining indirect ownership interests in ASL will be held by certain United States citizens and entities presumed to have their principal places of business in the United States ("Other shareholders") (14.60%), and by individual shareholders of Datec Group, Ltd. ("Datec shareholders"), a Province of New Brunswick corporation (30.50%). Petitioner states that the Datec shareholders are predominantly from Canada and the Fiji Islands. We find, based on the record, that, out of this 30.50 percent to be held by Datec shareholders, 17.32 percent will be held in the aggregate by five citizens of Fiji and by two entities, Kelton Investments Limited and Sami Holdings, whose home markets are properly ascribed to Fiji, a World Trade Organization (WTO) Member country.

Pursuant to the rules and policies adopted in the Foreign Participation Order, 12 FCC Rcd 23891 (1997), Order on Reconsideration, 15 FCC Rcd 18158 (2000), we find that it would not serve the public interest to prohibit the indirect foreign ownership of ASL in excess of the 25 percent benchmark of Section 310(b)(4) of the Communications Act. Specifically, this ruling permits ASL to be owned indirectly by (1) the Datec shareholders identified in the record (up to and including an aggregate 30.50 percent equity and voting interest), and (2) SIBL, SIBHL, and R. Allen Stanford (up to and including 43.80 percent equity and voting interests). ASL may acquire up to and including an additional, aggregate 25 percent indirect foreign equity and/or voting interests from the Datec investors and from other foreign investors (except SIBL, SIBHL, and R. Allen Stanford) without seeking further Commission approval under Section 310(b)(4), subject to the following conditions. First, non-Antiguan and Barbudan foreign ownership of SIBL and SIBHL shall be included in calculating the total indirect foreign ownership of ASL. Second, no single foreign individual or entity, with the exception of SIBL, SIBHL and R. Allen Stanford, may acquire indirect equity and/or voting interests in ASL in excess of 25 percent without prior Commission approval. For purposes of calculating the additional, aggregate 25 percent amount, ASL shall include the 2.06 percent interests held by the Other shareholders that are presumed to have their principal places of business in the United States (see File No. ISP-PDR-20050321-00005 granted by Public Notice, DA 05-2049, rel. July 21, 2005), and the 13.18 percent interests held by the non-Fijian Datec shareholders.

This ruling is without prejudice to Commission action on the pending applications for the transfer of control filed by ASL. See File No. 0002184665.

eLandia Technologies, Inc ("eLandia" or the "Petitioner") requests a declaratory ruling that it is in the public interest to permit the indirect foreign ownership of eLandia in excess of the 25 percent benchmark set forth in section 310(b)(4) of the Communications Act of 1934, as amended (the "Act"). eLandia holds broadband PCS licenses for the U S Virgin Islands (BTA491) and Bloomington, IL (BTA046). This request is filed in connection with an application for consent to the transfer of de jure control of the PCS radio licenses from R Allen Stanford to the shareholders of eLandia Solutions, Inc ("ESI"). See File No 0002185709.

According to the petition, eLandia is 100 percent owned by ESI, a U S corporation. Stanford International Bank Limited ("SIBL"), a company organized under the laws of Antigua and Barbuda, holds 59.71 percent of ESI, and certain United States citizens and entities presumed to have their principal places of business in the United States ("Other shareholders") hold the remaining 40.29 percent. SIBL is wholly-owned by Stanford International Bank Holdings Limited ("SIBHL"), which also is organized under the laws of Antigua and Barbuda. SIBHL, in turn, is 100 percent owned by the Stanford Financial Group, a U S company that is wholly-owned and controlled by R Allen Stanford, a U S citizen (who also holds citizenship of Antigua and Barbuda). The Commission previously approved the insertion of SIBL and SIBHL into the ownership chain, under section 310(b)(4) of the Act, on July 14, 2005. See International Authorizations Granted, Public Notice, DA 05-2049, re: July 21, 2005 (File No ISP-PDR-20050321-00005).

Upon consummation of a series of transactions, the indirect ownership interest of R Allen Stanford and Other shareholders will decline from 59.71 percent to 43.80 percent and from 40.29 percent to 14.60 percent, respectively. The remaining indirect ownership interests in eLandia will be held as follows: W&R South Pacific, L P ("WSPLP"), a limited partnership organized under the laws of Washington State that is owned and controlled by Barry and Fay Alailima Rose (through W&R, Inc., an American Samoa corporation) will hold 11.10 percent. Barry and Fay Alailima Rose are both U S citizens. The remaining 30.50 percent will be held individually by shareholders of Datec Group, Ltd ("Datec shareholders"), a Province of New Brunswick corporation. Petitioner states that these shareholders are predominantly from Canada and the Fiji Islands. We find, based on the record, that, out of this 30.50 percent, 17.32 percent will be held in the aggregate by five citizens of Fiji and by two entities, Kelton Investments Limited and Sami Holdings, whose home markets are properly ascribed to Fiji, a World Trade Organization (WTO) Member country.

Pursuant to the rules and policies adopted in the Foreign Participation Order, 12 FCC Rcd 23891 (1997), Order on Reconsideration, 15 FCC Rcd 18158 (2000), we find that it would not serve the public interest to prohibit the indirect foreign ownership of eLandia in excess of the 25 percent benchmark of Section 310(b)(4) of the Communications Act. Specifically, this ruling permits eLandia to be owned indirectly by (1) the Datec shareholders identified in the record (up to and including an aggregate 30.50 percent equity and voting interest), and (2) SIBL, SIBHL, and R Allen Stanford (up to and including 43.80 percent equity and voting interests). eLandia may acquire up to and including an additional, aggregate 25 percent indirect foreign equity and/or voting interests from the Datec investors and from other foreign investors (except SIBL, SIBHL, and R Allen Stanford) without seeking further Commission approval under Section 310(b)(4), subject to the following conditions: First, non-Antiguan and Barbudan foreign ownership of SIBL and SIBHL shall be included in calculating the total indirect foreign ownership of eLandia. Second, no single foreign individual or entity, with the exception of SIBL, SIBHL, and R Allen Stanford, may acquire indirect equity and/or voting interests in eLandia in excess of 25 percent without prior Commission approval. For purposes of calculating the additional, aggregate 25 percent amount, eLandia shall include the 2.06 percent interests held by the Other shareholders that are presumed to have their principal places of business in the United States, see File No ISP-PDR-20050321-00005, and the 13.18 percent interests held by the non-Fijian Datec shareholders.

This ruling is without prejudice to Commission action on the pending applications for the transfer of control filed by ESI. See File No 0002185709.

Application for authority to provide facilities-based service in accordance with Section 63.18(e)(1) of the rules and also to provide service in accordance with Section 63.18(e)(2) of the rules.

ITC-214-20050811-00314 E Faith Communications, Inc
International Telecommunications Certificate
Service(s): Global or Limited Global Resale Service
Grant of Authority Date of Action 09/02/2005

Application for authority to provide service in accordance with Section 63 18(e)(2) of the rules

ITC-214-20050812-00315 E Los Angeles InternetExchange
International Telecommunications Certificate
Service(s): Global or Limited Global Facilities-Based Service, Global or Limited Global Resale Service
Grant of Authority Date of Action 09/02/2005

Application for authority to provide facilities-based service in accordance with Section 63 18(e)(1) of the rules and also to provide service in accordance with Section 63 18(e)(2) of the rules

ITC-214-20050812-00318 E Voyport LLC
International Telecommunications Certificate
Service(s): Global or Limited Global Facilities-Based Service, Global or Limited Global Resale Service
Grant of Authority Date of Action 09/02/2005

Application for authority to provide facilities-based service in accordance with Section 63 18(e)(1) of the rules and also to provide service in accordance with Section 63 18(e)(2) of the rules

ITC-214-20050815-00322 E Voice Data Technologies of USA, Inc
International Telecommunications Certificate
Service(s): Global or Limited Global Facilities-Based Service, Global or Limited Global Resale Service
Grant of Authority Date of Action 09/02/2005

Application for authority to provide facilities-based service in accordance with Section 63 18(e)(1) of the rules and also to provide service in accordance with Section 63 18(e)(2) of the rules

ITC-214-20050816-00325 E Switch Business Solutions, LLC
International Telecommunications Certificate
Service(s): Global or Limited Global Resale Service
Grant of Authority Date of Action 09/02/2005

Application for authority to provide service in accordance with Section 63 18(e)(2) of the rules

ITC-214-20050817-00327 E VOIP Telcom Inc
International Telecommunications Certificate
Service(s): Global or Limited Global Facilities-Based Service, Global or Limited Global Resale Service
Grant of Authority Date of Action 09/02/2005

Application for authority to provide facilities-based service in accordance with Section 63 18(e)(1) of the rules and also to provide service in accordance with Section 63 18(e)(2) of the rules

ITC-ASG-20050804-00305 E

Comtel Telcom Assets LP

Assignment

Grant of Authority

Date of Action 09/02/2005

Current Licensee: Excel Telecommunications, Inc , Debtor-in-Possession

FROM: Excel Telecommunications, Inc , Debtor-in-Possession

TO: Comtel Telcom Assets LP

Application for consent to assign the Section 214 authorization (File No ITC-214-1990330-00053), held by Excel Telecommunications, Inc , Debtor-in-Possession (Excel) and substantially all of the assets of Vartec Telecom, Inc , Debtor-in-Possession, and its two subsidiaries, Vartec Solutions, Inc , Debtor-in-Possession, and Excel (VarTec Companies), to Comtel Telcom Assets LP (Comtel), a subsidiary of Comtel Assets Corp and Comtel Assets, Inc Pursuant to the Asset Purchase Agreement (APA) that was incorporated into the July 29, 2005 Bankruptcy Court Order (Case No 04-81694-SAF-11, [http //docs bmccorp net/Vartec/docs/txnb_3-04-bk-81694_1663 pdf](http://docs.bmccorp.net/Vartec/docs/txnb_3-04-bk-81694_1663.pdf)) that approved the sale of the assets of the VarTec Companies, Comtel will acquire from the VarTec Companies substantially all of the assets, including all telecommunications equipment, customer accounts and records, business records, licenses and permits After the acquisition, the Section 214 authorization of Excel will be assigned to Comtel and Excel will no longer hold its authorization to provide international telecommunications services To the extent Comtel Virginia LLC, a wholly owned subsidiary of Comtel, engages in the provision of international telecommunications service, it will do so pursuant to the authorizations assigned to Comtel This authorization is without prejudice to the Commission's action on any other related pending application(s)

ITC-ASG-20050804-00306 E

Comtel Telcom Assets LP

Assignment

Grant of Authority

Date of Action 09/02/2005

Current Licensee: VarTec Solutions, Inc , Debtor-in-Possession

FROM: VarTec Solutions, Inc , Debtor-in-Possession

TO: Comtel Telcom Assets LP

Application for consent to assign the Section 214 authorization (File No ITC-214-19970415-00212), held by Vartec Solutions, Inc , Debtor-in-Possession (VarTec Solutions) and substantially all of the assets of Vartec Telecom, Inc , Debtor-in-Possession, and its two subsidiaries, Excel Telecommunications, Inc , Debtor-in-Possession and VarTec Solutions (VarTec Companies), to Comtel Telcom Assets LP (Comtel), a subsidiary of Comtel Assets Corp and Comtel Assets, Inc Pursuant to the Asset Purchase Agreement (APA) that was incorporated into the July 29, 2005 Bankruptcy Court Order (Case No 04-81694-SAF-11, [http //docs bmccorp net/Vartec/docs/txnb_3-04-bk-81694_1663 pdf](http://docs.bmccorp.net/Vartec/docs/txnb_3-04-bk-81694_1663.pdf)) that approved the sale of assets of the VarTec Companies, Comtel will acquire from the VarTec Companies substantially all of the assets, including all telecommunications equipment, customer accounts and records, business records, licenses and permits After the acquisition, the Section 214 authorization of Vartec Solutions will be assigned to Comtel and Vartec Solutions will no longer hold its authorization to provide international telecommunications services To the extent Comtel Virginia LLC, a wholly owned subsidiary of Comtel, engages in the provision of international telecommunications service, it will do so pursuant to the authorizations assigned to Comtel This authorization is without prejudice to the Commission's action on any other related pending application(s)

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ITC-ASG-20050805-00307 E

Comtel Telcom Assets LP

Assignment

Grant of Authority

Date of Action 09/02/2005

Current Licensee: VarTec Telecom, Inc , Debtor-in-Possession

FROM: VarTec Telecom, Inc , Debtor-in-Possession

TO: Comtel Telcom Assets LP

Application for consent to assign the Section 214 authorization (File No ITC-214-19900713-00004), held by VarTec Telecom, Inc , Debtor-in-Possession (VarTec) and substantially all of the assets of Vartec Telecom, Inc , Debtor-in-Possession, and its two subsidiaries, Excel Telecommunications, Inc , Debtor-in-Possession and Vartec (VarTec Companies), to Comtel Telcom Assets LP (Comtel), a subsidiary of Comtel Assets Corp and Comtel Assets, Inc Pursuant to the Asset Purchase Agreement (APA) that was incorporated into the July 29, 2005 Bankruptcy Court Order (Case No 04-81694-SAF-11, http://docs.bmccorp.net/Vartec/docs/txnb_3-04-bk-81694_1663.pdf) that approved the sale of assets of the VarTec Companies, Comtel will acquire from the VarTec Companies substantially all of the assets, including all telecommunications equipment, customer accounts and records, business records, licenses and permits After the acquisition, the Section 214 authorization of VarTec will be assigned to Comtel and Vartec will no longer hold its authorization to provide international telecommunications services To the extent Comtel Virginia LLC, a wholly owned subsidiary of Comtel, engages in the provision of international telecommunications service, it will do so pursuant to the authorizations assigned to Comtel This authorization is without prejudice to the Commission's action on any other related pending application(s)

ITC-T/C-20050715-00266 E

American Fiber Network, Inc

Transfer of Control

Grant of Authority

Date of Action 09/02/2005

Current Licensee: AMERICAN FIBER NETWORK, INC

FROM: American Fiber Network, Inc

TO: MobilePro Corporation

Application for consent to transfer control of the international Section 214 authorization (File No ITC-214-19990908-00561), held by American Fiber Network, Inc (AFN), a company wholly owned by Mr Bethell, from AFN to Mobilepro Corporation (Mobilepro), a publicly traded company that provides domestic telecommunications services through CloseCall America, Inc , Affinity Telecom, Inc and Davel Communications, Inc , its three (3) wholly owned subsidiaries Pursuant to a merger agreement (Agreement), AFN will be merged with and into AFN Acquisition Corp (AFNAC), a newly formed, wholly owned subsidiary of Mobilepro AFNAC will then change its name to American Fiber Network, Inc which will survive the merger as a wholly owned subsidiary of Mobilepro Under the Agreement, Mr Bethell will receive a combination of cash and Mobilepro stock and will continue to run the day-to-day operations of AFN This authorization is without prejudice to the Commission's action on any other related pending application(s)

INFORMATIVE

ITC-214-19961001-00475

Connecticut Broadband LLC

By letter dated August 31, 2005, Applicant notified the Commission that it changed its name from Partner Communication LLC to Connecticut Broadband LLC

ITC-214-20041221-00511

NORTHEASTERN ARKANSAS TELEPHONE AND TRANSPORT, LLC

By letter dated April 14, 2005, applicant requested an ITC-214 number for file number ITC-ASG-20041221-00499, which was assigned to Northeastern Arkansas Telephone and Transport, L L C by Cingular Wireless LLC The assignment was granted on PN DA No 05-372, released 2/10/05

CONDITIONS APPLICABLE TO INTERNATIONAL SECTION 214 AUTHORIZATIONS

- (1) These authorizations are subject to the Exclusion List for International Section 214 Authorizations, which identifies restrictions on providing service to particular countries or using particular facilities. The most recent Exclusion List is attached to this Public Notice. The list applies to all U.S. international carriers, including those that have previously received global or limited global Section 214 authority, whether by streamlined grant or specific written order. Carriers are advised that the attached Exclusion List is subject to amendment at any time pursuant to the procedures set forth in Streamlining the International Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95-118, 11 FCC Rcd 12884 (1996), para. 18. A copy of the current Exclusion List will be maintained in the FCC Reference and Information Center and will be available at <http://www.fcc.gov/ib/td/pf/exclusionlist.html>. It also will be attached to each Public Notice that grants international Section 214 authority.
- (2) The export of telecommunications services and related payments to countries that are subject to economic sanctions may be restricted. For information concerning current restrictions, call the Office of Foreign Assets Control, U.S. Department of the Treasury, (202) 622-2520.
- (3) Carriers shall comply with the requirements of Section 63.11 of the Commission's rules, which requires notification by, and in certain circumstances prior notification by, U.S. carriers acquiring an affiliation with foreign carriers. A carrier that acquires an affiliation with a foreign carrier will be subject to possible reclassification as a dominant carrier on an affiliated route pursuant to the provisions of Section 63.10 of the rules. The Commission recently amended Section 63.11 of the rules in its Order on Reconsideration in IB Docket No. 97-142, 15 FCC Rcd 18158 (2000).
- (4) Carriers shall comply with the Commission's International Settlements Policy and associated filing requirements contained in Sections 43.51 and 64.1001 of the Commission's Rules, 47 C.F.R. §§ 43.51, 64.1001. The Commission modified these requirements most recently in 2000 Biennial Regulatory Review, Policy and Rules Concerning the International, Interexchange Marketplace, FCC 01-93, released, March 20, 2001, 66 Fed. Reg. 16874 (Mar. 28, 2001). See also 1998 Biennial Regulatory Review - Reform of the International Settlements Policy and Associated Filing Requirements, IB Docket Nos. 98-148, 95-22, CC Docket No. 90-337 (Phase II), FCC 99-73 (rel. May 6, 1999). In addition, any carrier interconnecting private lines to the U.S. public switched network at its switch, including any switch in which the carrier obtains capacity either through lease or otherwise, shall file annually with the Chief, International Bureau, a certified statement containing, on a country-specific basis, the number and type (e.g., 64 kbps circuits) of private lines interconnected in such manner. The Commission will treat the country of origin information as confidential. Carriers need not file their contracts for interconnection unless the Commission specifically requests. Carriers shall file their annual report on February 1 (covering international private lines interconnected during the preceding January 1 to December 31 period) of each year. International private lines to countries for which the Commission has authorized the provision of switched basic services over private lines at any time during a particular reporting period are exempt from this requirement. See 47 C.F.R. § 43.51(d).
- (5) Carriers authorized to provide private line service either on a facilities or resale basis are limited to the provision of such private line service only between the United States and those foreign points covered by their referenced applications for Section 214 authority. In addition, the carriers may not -- and their tariffs must state that their customers may not -- connect their private lines to the public switched network at either the U.S. or foreign end, or both, for the provision of international switched basic services, unless the Commission has authorized the provision of switched services over private lines to the particular country at the foreign end of the private line or the carrier is exchanging switched traffic with a foreign carrier that the Commission has determined lacks market power in the country at the foreign end of the private line. See 47 C.F.R. §§ 63.16, 63.22(e), 63.23(d). A foreign carrier lacks market power for purposes of this rule if it does not appear on the Commission list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points. This list is available at http://www.fcc.gov/Bureaus/International/Public_Notices/1999/da990809.txt. See generally 1998 Biennial Regulatory Review - Reform of the International Settlements Policy and Associated Filing Requirements, IB Docket Nos. 98-148, 95-22, CC Docket No. 90-337 (Phase II), FCC 99-73 (rel. May 6, 1999), paras. 12-15, 102-109.
- (6) The Commission has authorized the provision of switched basic services via facilities-based or resold private lines between the United States and the following foreign points: Sweden, Canada, New Zealand, the United Kingdom, Australia, The Netherlands, Luxembourg, Norway, Denmark, France, Germany, Belgium, Austria, Switzerland, Japan, Italy, Ireland, Hong Kong, Iceland, Spain, Finland, Israel, Singapore, Netherlands Antilles, Poland, Argentina, United Arab Emirates, Macau, Hungary, Philippines, Greece, Uruguay, Brunei, Trinidad & Tobago, Czech Republic, the Dominican Republic, Brazil, Botswana, Costa Rica, South Africa, Saint Lucia, Saint Kitts & Nevis, Saint Vincent, Antigua, Malaysia, Thailand, Belize, Panama, Guatemala, Venezuela, Bahrain, South Korea, Portugal, Cyprus, Slovak Republic, Slovenia, Dominica, Grenada, Jamaica, Kuwait, Jordan, Paraguay, Croatia, Egypt, Zambia, Ecuador, Barbados, Colombia, Chile, El

Salvador, Taiwan, Nicaragua, Turkey, Peru, Morocco, Ghana, Bolivia, Guyana, Mongolia, Zimbabwe, Gambia, Nigeria, Bangladesh, Indonesia, Tunisia, Qatar, Oman, Mauritius, New Caledonia, Guinea, Suriname, and Fiji Islands

(7) Carriers may engage in "switched hubbing" to countries for which the Commission has not authorized the provision of switched basic services over private lines consistent with Section 63.17(b) of the rules

(8) Carriers may provide U.S. inbound or outbound switched basic service via their authorized private lines extending between or among the United States, Sweden, New Zealand, the United Kingdom, Australia, The Netherlands, Luxembourg, Norway, Denmark, France, Germany, Belgium, Austria, Switzerland, Japan, Italy, Ireland, Hong Kong, Iceland, Spain, Finland, Israel, Singapore, Netherlands Antilles, Poland, Argentina, United Arab Emirates, Macau, Hungary, Philippines, Greece, Uruguay, Brunei, Trinidad & Tobago, Czech Republic, the Dominican Republic, Brazil, Botswana, Costa Rica, South Africa, Saint Lucia, Saint Kitts & Nevis, Saint Vincent, Antigua, Malaysia, Thailand, Belize, Panama, Guatemala, Venezuela, Bahrain, South Korea, Portugal, Cyprus, Slovak Republic, Slovenia, Dominica, Grenada, Jamaica, Kuwait, Jordan, Paraguay, Croatia, Egypt, Zambia, Ecuador, Barbados, Colombia, Chile, El Salvador, Taiwan, Nicaragua, Turkey, Peru, Morocco, Ghana, Bolivia, Guyana, Mongolia, Zimbabwe, Gambia, Nigeria, Bangladesh, Indonesia, Tunisia, Qatar, Oman, Mauritius, and New Caledonia, Guinea, Suriname, and Fiji Islands

(9) Carriers shall comply with the "No Special Concessions" rule, Section 63.14, 47 C.F.R. § 63.14

(10) Carriers regulated as dominant for the provision of a particular communications service on a particular route for any reason other than a foreign carrier affiliation under Section 63.10 of the rules shall file tariffs pursuant to Section 203 of the Communications Act, as amended, 47 U.S.C. § 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61. Except as specified in Section 20.15 with respect to commercial mobile radio service providers, carriers regulated as non-dominant, as defined in Section 61.3, and providing detariffed international services pursuant to Section 61.19 must comply with all applicable public disclosure and maintenance of information requirements in Sections 42.10 and 42.11. These non-dominant carriers may continue filing new or revised international tariffs for mass market services until January 28, 2002, when all tariffs, with limited exceptions, must be cancelled. Carriers may not file any new or revised contract tariffs or tariffs for other long-term international service arrangements. See 2000 Biennial Regulatory Review, Policy and Rules Concerning the International Interexchange Marketplace, FCC 01-93, released March 20, 2001, 66 Fed. Reg. 16874 (Mar. 28, 2001).

(11) Carriers shall file the annual reports of overseas telecommunications traffic required by Section 43.61(a). Carriers shall also file the quarterly reports required by Section 43.61 in the circumstances specified in paragraphs (b) and (c) of that Section.

(12) Carriers shall file annual reports of circuit status and/or circuit additions in accordance with the requirements set forth in Rules for Filing of International Circuit Status Reports, CC Docket No. 93-157, Report and Order, 10 FCC Rcd 8605 (1995). See 47 C.F.R. §§ 43.82, 63.23(e). These requirements apply to facilities-based carriers and private line resellers, respectively. See also <http://www.fcc.gov/ib/pd/pf/csmanual.html>

(13) Carriers should consult Section 63.19 of the rules when contemplating a discontinuance, reduction or impairment of service. Further, the grant of these applications shall not be construed to include authorization for the transmission of money in connection with the services the applicants have been given authority to provide. The transmission of money is not considered to be a common carrier service.

(14) If any carrier is reselling service obtained pursuant to a contract with another carrier, the services obtained by contract shall be made generally available by the underlying carrier to similarly situated customers at the same terms, conditions and rates. 47 U.S.C. § 203.

(15) To the extent the applicant is, or is affiliated with, an incumbent independent local exchange carrier, as those terms are defined in Section 64.1902 of the rules, it shall provide the authorized services in compliance with the requirements of Section 64.1903. See Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, recon., 12 FCC Rcd 8730 (1997), Order, 13 FCC Rcd 6427 (Com. Car. Bur. 1998), further recon., FCC 99-103 (rel. June 30, 1999).

(16) Except as otherwise ordered by the Commission, a carrier authorized here to provide facilities-based service that (i) is classified as dominant under Section 63.10 of the rules for the provision of such service on a particular route and (ii) is affiliated with a carrier that collects settlement payments for terminating U.S. international switched traffic at the foreign end of that route may not provide facilities-based service on that route unless the current rates the affiliate charges U.S. international carrier to terminate traffic are at or below the Commission's relevant benchmark adopted in International

Settlement Rates, IB Docket No 96-261, Report and Order, 12 FCC Rcd 19806 (1997) See also Report and Order on Reconsideration and Order Lifting Stay in IB Docket No 96-261, FCC 99-124 (rel June 11, 1999) For the purposes of this rule, "affiliation" and "foreign carrier" are defined in Section 63.09

Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules in regard to the grant of any of these applications may be filed within thirty days of this public notice (see Section 1.4(b)(2))

For additional information, please contact the FCC Reference and Information Center, Room CY-A257, 445 12th Street SW, Washington, D C 20554, (202) 418-0270

Exclusion List for International Section 214 Authorizations

-- Last Modified December 22, 1999 --

The following is a list of countries and facilities not covered by grant of global Section 214 authority under Section 63.18(e)(1) of the Commission's Rules, 47 C.F.R. § 63.18(e)(1). In addition, the facilities listed shall not be used by U.S. carriers authorized under Section 63.18 of the Commission's Rules unless the carrier's Section 214 authorization specifically lists the facility. Carriers desiring to serve countries or use facilities listed as excluded hereon shall file a separate Section 214 application pursuant to Section 63.18(e)(4) of the Commission's Rules. See generally 47 C.F.R. § 63.22.

Countries

Cuba (Applications for service to Cuba shall comply with the separate filing requirements of the Commission's Public Notice Report No. 1-6831, dated July 27, 1993, "FCC to Accept Applications for Service to Cuba.")

Facilities

All non-U.S.-licensed satellite systems that are not on the Permitted Space Station List, maintained at <http://www.fcc.gov/ib/sd/se/permited.html>. See International Bureau Public Notice, DA 99-2844 (rel. Dec. 17, 1999).

This list is subject to change by the Commission when the public interest requires. Before amending the list, the Commission will first issue a public notice giving affected parties the opportunity for comment and hearing on the proposed changes. The Commission may then release an order amending the exclusion list. This list also is subject to change upon issuance of an

Executive Order. See Streamlining the Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95-118, FCC 96-79, 11 FCC Rcd 12,884, released March 13, 1996 (61 Fed. Reg. 15,724, April 9, 1996). A current version of this list is maintained at <http://www.fcc.gov/ib/pd/pf/telecomrules.html#exclusionlist>.

For additional information, contact the International Bureau's Policy Division, (202) 418-1460.



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet <http://www.fcc.gov>
<ftp.fcc.gov>

DA 05-2461
Released: September 19, 2005

NOTICE OF STREAMLINED DOMESTIC 214 APPLICATION GRANTED

WC Docket No. 05-260

The application listed in this notice has been granted pursuant to the Commission's streamlined procedures for domestic section 214 transfer of control applications. 47 C.F.R. § 63.03. The Wireline Competition Bureau has determined that grant of this application serves the public interest.¹ For purposes of computation of time for filing a petition for reconsideration or application for review, or for judicial review of the Commission's decision, the date of "public notice" shall be the release date of this notice.²

1. Domestic Section 214 Application Filed for Transfer of Control of Certain Assets of Vartec Telecom and its Subsidiaries to Comtel Telecom Assets and Comtel Virginia, WC Docket No. 05-260, DA 05-2334 (rel. August 19, 2005).

Effective Date of Grant: 9/19/05

For further information, please contact Tracey Wilson-Parker, at (202) 418-1394 or Alex Johns, at (202) 418-1167, Competition Policy, Wireline Competition Bureau.

¹ *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, 17 FCC Rcd 5517, 5529 (2002), para 22

² *Id.*, see 47 C.F.R. § 1.4 (Computation of time)

EXHIBIT 3

**MOTION FOR PROTECTIVE ORDER AND
PROTECTION OF PROPRIETARY INFORMATION**

BEFORE THE TENNESSEE REGULATORY AUTHORITY

In the matter of the Joint Application of)	
)	
COMTEL TELCOM ASSETS LP)	
)	
and)	
)	
VARTEC TELECOM, INC.)	Docket No. <u>05-00287</u>
EXCEL TELECOMMUNICATIONS,)	Date of Filing: November 2, 2005
INC. AND VARTECSOLUTIONS, INC.)	
)	
for Approval of a Transfer of Assets)	

MOTION FOR PROTECTIVE ORDER AND
PROTECTION OF PROPRIETARY INFORMATION

Concurrently with the filing of this Motion, Comtel Telcom Assets LP ("Comtel") and VarTec Telecom, Inc., Excel Telecommunications, Inc. and VarTec Solutions, Inc. (together, the "VarTec Companies") have submitted a response to Data Request No. 1 in the above-noted Docket. By this Motion, the VarTec Companies respectfully request that the TRA accept Exhibit 2 of Data Request No. 1, which contains the Tennessee customer totals submitted by the VarTec Companies, under seal and withhold said exhibit from public inspection.

Exhibit 2 has been submitted pursuant to TRA Staff request made in Data Request No. 1 in Docket No. 05-00287. As privately-held companies, the VarTec Companies respectfully request that the TRA protect Exhibit 2 from public inspection because public disclosure of its contents would place the VarTec Companies at an unfair business disadvantage. The VarTec Companies also request that the TRA withhold from public inspection Exhibit 2 due to its proprietary nature. The information contained in Exhibit 2 is only disclosed on a need to know

basis, and when such information is disclosed, it is done on a confidential basis. Making this information available would reveal information to the public and the VarTec Companies' competitors which would allow them to know data which the VarTec Companies do not wish to disclose without a protective order.

Wherefore, the VarTec Companies respectfully request that its Motion for Protective Order and Protection of Proprietary Information be granted.

Respectfully submitted,

**VARTEC TELECOM, INC.,
EXCEL TELECOMMUNICATIONS, INC.
AND VARTEC SOLUTIONS, INC.**

By: Melissa Drennan
Melissa A. Drennan, Esq. ^{PS}
Assistant Secretary
VarTec Telecom, Inc.,
Excel Telecommunications, Inc. and
VarTec Solutions, Inc.
2440 Marsh Lane
Carrollton, Texas 75006
Telephone: (972) 478-3305
Facsimile: (972) 478-3310
e-mail: mdrennan@vartec.net

11/1/05
Date

EXHIBIT 4

**TENNESSEE REGULATORY AUTHORITY CERTIFICATES
FOR THE
VARTEC COMPANIES**

TENNESSEE PUBLIC SERVICE COMMISSION

460 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243-0505

TH BISSELL, CHAIRMAN
STEVE HEWLETT, COMMISSIONER
SARA KYLE, COMMISSIONER



PAUL ALLEN, EXECUTIVE DIRECTOR

Company ID: 00112766
VarTec Telecom, Inc.
3200 W. Pleasant Run Rd.
Lancaster, TX 75165

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee August 23, 1995

IN RE: CASE NUMBER: 95-02796

Application for Authority for Operator Services and/or Resell Interexchange (Long Distance) Telecommunications Service and/or Telecommunications Operator Services in Tennessee Pursuant to Rule 1220-4-2-.57.


---ORDER---

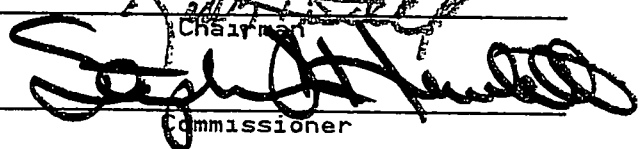
This matter is before the Tennessee Public Service Commission upon the application of the above-mentioned company for certification as a long distance/interexchange reseller or telecommunication operator service provider in Tennessee. The Commission considered this application at its regularly scheduled Commission Conference held on August 22, 1995 and concluded that the applicant has met all the requirements for certification and should be authorized to provide the resell of interexchange telecommunications service and/or an operator service on an intrastate basis.

IT IS THEREFORE ORDERED:

1. That the above-mentioned company is issued a Certificate of Convenience and Necessity as an interexchange telecommunications reseller and/or an operator service provider for state-wide service in Tennessee as specified in its application on file with the Commission.
2. That said company shall comply with all applicable Commission rules and regulations.
3. That this order shall be retained as proof of certification with this Commission, and may be used to obtain appropriately tariffed access service and billing arrangements from Commission authorized telecommunications service providers.
4. That any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order.
5. That any Party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a petition with the Tennessee Court of Appeals, Middle Section within sixty (60) days from and after the date of this Order.


Executive Director


Chairman


Commissioner


Commissioner

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT
NASHVILLE, TENNESSEE**

January 29, 2002

IN RE:)	
)	
Application of VarTec Telecom, Inc. for a Certificate of Public Convenience and Necessity to Provide Competing Local Telecommunications Services throughout the State of Tennessee.)	DOCKET NO. 01-00760
)	
)	

**INITIAL ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

This matter came before the Tennessee Regulatory Authority ("Authority"), upon the application of VarTec Telecom, Inc. ("Applicant") for a certificate of convenience and necessity to provide facilities-based and resold local exchange and interexchange telecommunications services throughout the State of Tennessee (the "Application") filed on August 31, 2001. The Application was made pursuant to Tenn. Code Ann. § 65-4-201 *et seq.* A Hearing on the Application was held before K. David Waddell, acting as Hearing Officer, on January 29, 2002.

LEGAL STANDARD FOR GRANTING CCN

The Application was considered in light of the criteria for granting a certificate of public convenience and necessity ("CCN") as set forth in applicable statutes. Tenn. Code Ann. § 65-4-201 provides, in part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation,

and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

* * *

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services

An authority order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a competing telecommunications service provider shall be entered no more than sixty (60) days from the filing of the application.

In addition, pursuant to Tenn. Code Ann. § 65-5-212, competing telecommunications providers are required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

INTERVENORS

Public notice of the hearing in this matter was made by the Authority's Executive Secretary, pursuant to Tenn. Code Ann. § 65-4-204 No interested persons sought intervention prior to or during the hearing

APPLICANT'S HEARING

The Application was uncontested. At the hearing held on January 29, 2002, Ms. April A Ingram, Esq. of Boulton, Cummings, Connors and Berry PLC, 414 Union Street, Suite 1600, Nashville, Tennessee 37219 represented the Applicant. In addition, Mr. Kevin Allen, Manager of

Regulatory Affairs of the Applicant presented testimony and was subject to examination by the Hearing Officer. Upon Applicant's conclusion of the proof in its case, the Hearing Officer recommended approval of the Application based upon the following findings of fact and conclusions of law:

I. APPLICANT'S QUALIFICATIONS

1. The Applicant is a limited liability company organized under the laws of the State of Texas.

2. The complete street address of the Applicant's principal place of business is 1600 Viceroy Drive, Dallas, Texas 75235. The telephone number is (214)-424-1000.

3. The Application and supporting documentary information existing in the record indicate that the Applicant has the requisite technical and managerial ability necessary to provide telecommunications services within the State of Tennessee. Specifically, the Applicant's management and technical teams have extensive expertise in the telecommunications industry. The Applicant is currently authorized to provide local telecommunications services in Arkansas, Florida, Kansas, Missouri, North Carolina, Oklahoma, Oregon and Texas.

4. The Applicant has the necessary capital and financial capability to provide the services it proposes to offer.

5. The Applicant has represented that it will adhere to all applicable policies, rules and orders of the Authority.

II. PROPOSED SERVICES

The Applicant intends to provide facilities-based and resold local exchange and interexchange telecommunications services throughout the State of Tennessee.

III. PERMITTING COMPETITION TO SERVE THE PUBLIC CONVENIENCE AND NECESSITY

Upon a review of the Application and the record in this matter, the Hearing Officer finds that approval of the Application would inure to the benefit of the present and future public

convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient technologically advanced statewide system of telecommunications services.

IV. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN & BUSINESS ASSISTANCE PROGRAM

1. The Applicant has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules.

2. The Applicant has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn. Code Ann. § 65-5-213.

IT IS THEREFORE ORDERED THAT:

1. VarTec Telecom, Inc.'s application is approved,

2. The Applicant shall file a report with the Authority two years after the date of this order, if the Applicant has not yet offered service in Tennessee. Such report shall detail the reasons for the lack of service and any future plans for providing telecommunications services in Tennessee.

3. Any party aggrieved by this initial decision may file a Petition for Reconsideration with the Tennessee Regulatory Authority within fifteen (15) days from and after the date of this Order. Such Petition shall be considered by the Hearing Officer presiding herein;

4. Any party aggrieved by the decision of the Hearing Officer in this matter may also file a Petition for appeal pursuant to Tenn. Code Ann. § 4-5-315 with the Tennessee Regulatory Authority within fifteen (15) days from and after the date of the Order. If the Tennessee Regulatory Authority or any of the parties herein do not seek review of this Initial

Order within the time prescribed by Tenn. Code Ann § 4-5-315, this Order shall become the Final Order.

ENTERED THIS 29th DAY OF January, 2002.

A handwritten signature in black ink, appearing to read "K D Waddell", written over a horizontal line.

K DAVID WADDELL,
AS HEARING OFFICER

TENNESSEE PUBLIC SERVICE COMMISSION
 460 JAMES ROBERTSON PARKWAY
 NASHVILLE, TENNESSEE 37243-0505

KEITH BISSELL, CHAIRMAN
 STEVE HEWLETT, COMMISSIONER
 SARA KYLE, COMMISSIONER



PAUL ALLEN, EXECUTIVE DIRECTOR

Company ID: 00116464
 Excel Telecommunications, Inc.
 9101 LBJ Freeway
 Ste. 800
 Dallas, TX 75243

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
 Nashville, Tennessee November 10, 1995

IN RE: CASE NUMBER: 95-03337

Application for Authority for Operator Services and/or Resell Interexchange
 (Long Distance) Telecommunications Service and/or Telecommunications Operator
 Services in Tennessee Pursuant to Rule 1220-4-2-.57.

---ORDER---

This matter is before the Tennessee Public Service Commission upon the
 application of the above-mentioned company for certification as a long
 distance/interexchange reseller or telecommunication operator service
 provider in Tennessee. The Commission considered this application at its
 regularly scheduled Commission Conference held on November 7, 1995
 and concluded that the applicant has met all the requirements for
 certification and should be authorized to provide the resell of
 interexchange telecommunications service and/or an operator service on an
 intrastate basis.

IT IS THEREFORE ORDERED:

1. That the above-mentioned company is issued a Certificate of Convenience and Necessity as an interexchange telecommunications reseller and/or an operator service provider for state-wide service in Tennessee as specified in its application on file with the Commission.
2. That said company shall comply with all applicable Commission rules and regulations.
3. That this order shall be retained as proof of certification with this Commission, and may be used to obtain appropriately tariffed access service and billing arrangements from Commission authorized telecommunications service providers.
4. That any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order.
5. That any Party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a petition with the Tennessee Court of Appeals, Middle Section within sixty (60) days from and after the date of this Order.

Maria Guerin
 Executive Director's

Keith Bissell
 Chairman

 Steve Hewlett
 Commissioner

 Sara Kyle
 Commissioner

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

September 4, 2002

IN RE:

APPLICATION OF EXCEL
TELECOMMUNICATIONS, INC.
TO AMEND ITS CERTIFICATE
OF PUBLIC CONVENIENCE AND
NECESSITY AS A COMPETING
TELECOMMUNICATIONS SERVICE
PROVIDER TO INCLUDE COMPETITIVE
FACILITIES-BASED LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES
THROUGHOUT THE STATE OF
TENNESSEE

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) DOCKET NO. 02-00382
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**INITIAL ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

On August 6, 2002, this matter came before the Hearing Officer of the Tennessee Regulatory Authority ("Authority") upon the *Application of Excel Telecommunications, Inc. for a Certificate of Public Convenience and Necessity* ("Application"). The Application, which was filed on April 8, 2002, was made pursuant to Tenn. Code Ann. § 65-4-201 *et seq.*

LEGAL STANDARD FOR GRANTING CCN

The Application of Excel Telecommunications, Inc. ("Excel") was considered in light of the criteria for granting a certificate of public convenience and necessity ("CCN") as set forth in applicable statutes. Tenn. Code Ann. § 65-4-201 provides, in part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

* * *

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

* * *

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.¹

¹ Notwithstanding the existence of subsection (d), the Federal Communications Commission ("FCC") has expressly preempted the Authority's enforcement of subsection (d) pursuant to the authority granted to the FCC under 47 U.S.C. § 253(d). See *In Re: AVR, L.P. d/b/a Hyperion of Tennessee, L.P. Petition for Preemption of Tennessee Code Annotated Section 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Area*, FCC 99-100, FCC Memorandum Opinion and Order (May 27, 1999); FCC Memorandum Opinion and Order (January 8, 2001).

The Authority has since issued an order expanding a competing local exchange carrier's CCN to provide telecommunications services on a statewide basis including areas served by incumbent local exchange carriers with fewer than 100,000 total access lines in Tennessee. See *Order Approving Application of Level 3 Communications, L.L.C. to Amend Its Certificate of Public Convenience and Necessity*, Authority Docket No. 02-00230 (June 28, 2002).

Furthermore, pursuant to Tenn. Code Ann. § 65-5-212, a competing telecommunications provider is required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

INTERVENORS

Public notice of the Hearing in this matter was issued by the Hearing Officer on July 25, 2002, pursuant to Tenn. Code Ann. § 65-4-204. No interested persons sought intervention prior to or during the Hearing.

EXCEL TELECOMMUNICATIONS, INC.'S HEARING

Excel's Application was uncontested. At the Hearing held on August 6, 2002, Excel was represented by H. LaDon Baltimore, Esq., of Farrar & Bates, L.L.P, 211 Seventh Avenue, North, Suite 420, Nashville, TN 37219. In addition, Mr. Joel Ballew, Director of Regulatory Affairs for Excel Communications, Inc., participated in the Hearing telephonically, presented testimony, and was subject to examination by the Hearing Officer. Upon Excel's conclusion of proof in its case, the Hearing Officer granted Excel's Application based upon the following findings of fact and conclusions of law:

I. APPLICANT'S QUALIFICATIONS

1. Excel is a corporation organized under the laws of Texas on December 6, 1988, and was qualified to transact business in Tennessee on August 25, 1995.

2. The complete street address of Excel's principal place of business is 8750 North Central Expressway, Suite 2000, Dallas, TX 75231. The phone number is (214) 863-8700 and fax number is (214) 863-9235. Excel's counsel is H. LaDon Baltimore, Esq., of Farrar & Bates, L.L.P, 211 Seventh Avenue, North, Suite 420, Nashville, TN 37219.

3. The Application and supporting documentary information existing in the record indicate that Excel has the requisite technical and managerial ability to provide facilities-based interexchange telecommunications services within the State of Tennessee. Specifically, Excel's senior management team possesses extensive business, technical, operational and regulatory telecommunications experience.

4. Excel has the necessary capital and financial ability to provide the services it proposes to offer.

5. Excel has represented that it will adhere to all applicable policies, rules and orders of the Authority.

II. PROPOSED SERVICES

Excel requests authority to provide competitive facilities-based local exchange and resold telecommunications services in Tennessee. Excel currently holds authority to provide interexchange and resold local exchange telecommunications services in Tennessee.

III. PERMITTING COMPETITION TO SERVE THE PUBLIC CONVENIENCE AND NECESSITY

Upon a review of the Application and the record in this matter, the Hearing Officer finds that approval of Excel's Application would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient technologically advanced statewide system of telecommunications services.

IV. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN & BUSINESS ASSISTANCE PROGRAM

1. Excel has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules.

2. Excel has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn. Code Ann. § 65-5-213.

IT IS THEREFORE ORDERED THAT:

1. The Application of Excel Telecommunications, Inc. is approved; and
2. Any party aggrieved with the Hearing Officer's decision in this matter may file a Petition for Reconsideration within fifteen (15) days from and after the date of this Order.



Jon Wike, Hearing Officer

TENNESSEE PUBLIC SERVICE COMMISSION

460 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243-0505

KEITH BISSELL, CHAIRMAN
STEVE HEWLETT, COMMISSIONER
SARA KYLE, COMMISSIONER



PAUL ALLEN, EXECUTIVE DIRECTOR

Company ID: 00111378
Dial & Save of Tennessee, Inc.
4219 Lafayette Center Dr.
Chantilly, VA 22021-120

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee July 31, 1995


IN RE: CASE NUMBER: 95-02455

Application for Authority for Operator Services and/or Resell Interexchange (Long Distance) Telecommunications Service and/or Telecommunications Operator Services in Tennessee Pursuant to Rule 1220-4-2-.57.
---ORDER---

This matter is before the Tennessee Public Service Commission upon the application of the above-mentioned company for certification as a long distance/interexchange reseller or telecommunication operator service provider in Tennessee. The Commission considered this application at its regularly scheduled Commission Conference held on July 18, 1995 and concluded that the applicant has met all the requirements for certification and should be authorized to provide the resell of interexchange telecommunications service and/or an operator service on an intrastate basis.

IT IS THEREFORE ORDERED:

1. That the above-mentioned company is issued a Certificate of Convenience and Necessity as an interexchange telecommunications reseller and/or an operator service provider for state-wide service in Tennessee as specified in its application on file with the Commission.
2. That said company shall comply with all applicable Commission rules and regulations.
3. That this order shall be retained as proof of certification with this Commission, and may be used to obtain appropriately tariffed access service and billing arrangements from Commission authorized telecommunications service providers.
4. That any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order.
5. That any Party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a petition with the Tennessee Court of Appeals, Middle Section within sixty (60) days from and after the date of this Order.


Executive Director


Commissioner


Commissioner

TENNESSEE REGULATORY AUTHORITY

460 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243-0505

*Local
Resale*

LYNN GREER, JR., DIRECTOR
RA KYLE, DIRECTOR
MELVIN J. MALONE, DIRECTOR



Company ID: 00111378
Dial & Save of Tennessee, Inc.
4219 Lafayette Center Dr.
Chantilly, VA 22021-120

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee August 14, 1996

IN RE: CASE NUMBER: 96-00982

Application for Authority for Operator Services and/or Resell
Telecommunications Service and/or Telecommunications Operator Services
Services in Tennessee Pursuant to Rule 1220-4-2-.57.

---ORDER---

This matter is before the Tennessee Regulatory Authority upon the application of the above-mentioned company for certification as a reseller or telecommunication operator service provider in Tennessee. The TRA considered this application at its regularly scheduled Commission Conference held on August 13, 1996 and concluded that the applicant has met all the requirements for certification and should be authorized to provide the resell of telecommunications service and/or an operator service on an intrastate basis.

IT IS THEREFORE ORDERED:

1. That the above-mentioned company is issued a Certificate of Convenience and Necessity as a telecommunications reseller and/or an operator service provider for state-wide service in Tennessee as specified in its application on file with the Commission.
2. That said company shall comply with all applicable TRA rules and regulations.
3. That this order shall be retained as proof of certification with this Commission, and may be used to obtain appropriately tariffed access service and billing arrangements from Commission authorized telecommunications service providers.
4. That any party aggrieved with the TRA's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order.
5. That any Party aggrieved with the TRA's decision in this matter has the right of judicial review by filing a petition with the Tennessee Court of Appeals, Middle Section within sixty (60) days from and after the date of this Order.

Carol Robinson
Executive Secretary

Lynn Greer, Jr.
Chairman
Ra Kyle
Director
Melvin J. Malone
Director

EXHIBIT 5

**ORGANIZATIONAL CHART FOR
VARTEC TELECOM, INC. AND SUBSIDIARIES**

VarTec Telecom, Inc.
Worldwide Legal Entity Chart
Pro forma as of May 9, 2005

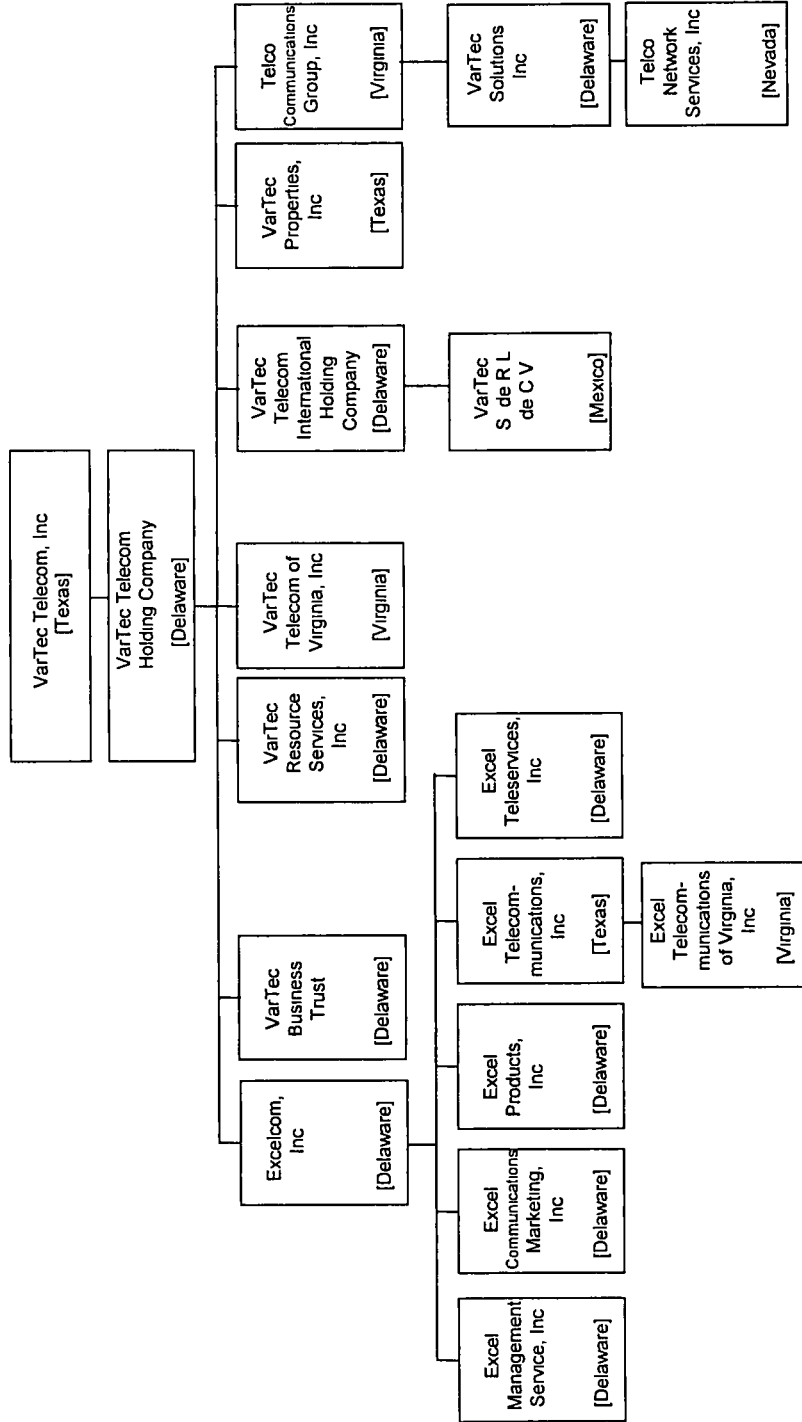


EXHIBIT 6

VERIFICATION OF COMTEL TELCOM ASSETS LP

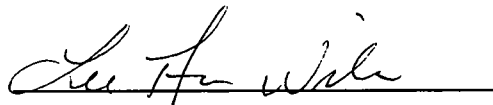
VERIFICATION OF COMTEL TELCOM ASSETS LP

On behalf of Comtel Telcom Assets LP, I verify that the information contained in the foregoing Application are true to the best of my knowledge, except as to matters which are stated herein on information or belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

COMTEL TELCOM ASSETS LP

By:



Lee Ann Wilson
Assistant Secretary
Comtel Telcom Assets LP
c/o Sowood Capital Management LP
500 Boylston Street, 17th Floor
Boston, Massachusetts 02116
Telephone: (617) 603-3504
Facsimile: (617) 603-3330
e-mail: leeann.wilson@sowood.com

10/28/05
Date

EXHIBIT 7

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT

Dated as of July 25, 2005

By and Among

VARTEC TELECOM, INC.,
EXCEL COMMUNICATIONS MARKETING, INC.,
EXCEL MANAGEMENT SERVICE, INC.,
EXCEL PRODUCTS, INC.,
EXCEL TELECOMMUNICATIONS, INC.,
EXCEL TELECOMMUNICATIONS OF VIRGINIA, INC.,
EXCEL TELESERVICES, INC.,
EXCELCOM, INC.,
TELCO COMMUNICATIONS GROUP, INC.,
TELCO NETWORK SERVICES, INC.,
VARTEC BUSINESS TRUST,
VARTEC PROPERTIES, INC.,
VARTEC RESOURCE SERVICES, INC.,
VARTEC SOLUTIONS, INC.,
VARTEC TELECOM HOLDING COMPANY,
VARTEC TELECOM INTERNATIONAL HOLDING COMPANY,
VARTEC TELECOM OF VIRGINIA, INC.,

and

COMTEL INVESTMENTS LLC

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EXHIBIT F	-	Form of Management Services Agreement
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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of July 25, 2005, by and among VarTec Telecom, Inc., a Texas corporation ("Parent"); Excel Communications Marketing, Inc., a Delaware corporation; Excel Management Service, Inc., a Delaware corporation; Excel Products, Inc., a Delaware corporation; Excel Telecommunications, Inc., a Texas corporation; Excel Telecommunications of Virginia, Inc., a Virginia corporation; Excel Teleservices, Inc., a Delaware corporation; Excelcom, Inc., a Delaware corporation; Telco Communications Group, Inc., a Virginia corporation; Telco Network Services, Inc., a Nevada corporation; VarTec Business Trust, a Delaware corporation; VarTec Properties, Inc., a Texas corporation; VarTec Resource Services, Inc., a Delaware corporation; VarTec Solutions, Inc., a Delaware corporation; VarTec Telecom Holding Company, a Delaware corporation; VarTec Telecom International Holding Company, a Delaware corporation; VarTec Telecom of Virginia, Inc., a Virginia corporation (each a "Subsidiary Seller" and together with Parent, the "Sellers"), and Comtel Investments LLC, a Delaware limited liability company ("Buyer").

RECITALS:

Sellers, as a corporate group are, collectively, telecommunications carriers that provide long distance, local, wireless and Internet access services to residential, midsize business and wholesale customers in the United States (the "Business").

Parent and each Subsidiary Seller have filed voluntary petitions (the "Petitions") for reorganization relief pursuant to Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (as amended, the "Bankruptcy Code"), in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"), all of which are being jointly administered pursuant to order of the Bankruptcy Court under Case No. 04-81694-SAF-11 (the "Bankruptcy Case").

Buyer desires to purchase certain assets, contracts and properties of Sellers related to the Business and to assume certain obligations and liabilities from Sellers, and Sellers desire to sell, convey, assign, and transfer to Buyer, such assets, contracts and properties together with such obligations and liabilities, all in the manner and subject to the terms and conditions set forth herein and in accordance with Sections 363 and 365 of the Bankruptcy Code.

The transactions contemplated herein will be consummated pursuant to the terms and conditions of this Agreement and a Sale Order to be entered by the Bankruptcy Court.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in reliance upon the mutual covenants and agreements hereinafter set forth and subject to the terms and conditions herein contained, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions. Certain capitalized and other terms used in this Agreement are defined hereto and are used herein with the meanings ascribed to them herein.

"Acceptance Notice" shall have the meaning ascribed to such term in Section 2.16(c).

"Accounts Payable" shall have the meaning ascribed to such term in Section 2.3(a)(i).

"Accounts Receivable" shall have the meaning ascribed to such term in Section 2.1(b).

"Acquired Assets" shall have the meaning ascribed to such term in Section 2.1.

"Acquired PARs" shall have the meaning ascribed to such term in Section 5.16(a).

"Advisors" shall have the meaning ascribed to such term in Section 2.3(b)(ii).

"Affiliate" shall mean, with respect to any Person other than the Sellers, any other Person that controls, is controlled by or is under common control with the former, including all affiliates as that term is defined in 11 U.S.C. §101 and, with respect to any of the Sellers, shall mean Parent and any of the Subsidiary Sellers.

"Agreement" shall mean this Asset Purchase Agreement including any amendments thereto and each Annex, Exhibit and Schedule thereto, and including the Bid Procedures as approved by the Bid Procedures Order.

"Alternative Transaction" shall mean a Successful Bid by any Person other than Buyer.

"Assumed Contracts" shall have the meaning ascribed to such term in Section 2.1(d).

"Assumed Leased Property" shall mean Leased Property the underlying lease Contract of which is an Assumed Contract.

"Assumed Liabilities" shall have the meaning ascribed to such term in Section 2.3(a).

"Avoidance Action" shall mean all rights, claims, causes of action, choses in action, rights of recovery, defenses and rights of recoupment or set-off of any kind under Chapter 5 of the Bankruptcy Code or Section 724(a) of the Bankruptcy Code, or under similar state avoidance laws, or otherwise.

"Bankruptcy Case" shall have the meaning ascribed to such term in the recitals hereof.

"Bankruptcy Code" shall have the meaning ascribed to such term in the recitals hereof.

"Bankruptcy Court" shall have the meaning ascribed to such term in the recitals hereof.

"Bankruptcy Rules" shall mean the Federal Rules of Bankruptcy Procedure.

"Bid Procedures" shall have the meaning ascribed to such term in Section 5.11(b).

"Bid Procedures Order" shall have the meaning ascribed to such term in Section 5.11(b).

"Bill of Sale and Assumption Agreement" shall have the meaning ascribed to such term in Section 2.5(a).

"Business" shall have the meaning ascribed to such term in the recitals hereof

"Business Day" shall mean any day of the year other than (i) any Saturday or Sunday or (ii) any other day on which banks located in the State of New York generally are closed for business other than the retail depository business.

"Buyer" shall have the meaning ascribed to such term in the first paragraph of this Agreement.

"Buyer Defined Contribution Plan" shall have the meaning ascribed to such term in Section 5.10(c)

"Buyer Disclosure Schedule" shall have the meaning ascribed to such term in Article IV.

"Closing" shall have the meaning ascribed to such term in Section 2.14(a).

"Closing Date" shall have the meaning ascribed to such term in Section 2.14(a).

"Closing Documents" shall have the meaning ascribed to such term in Section 2.5 and Section 2.6.

"COBRA" shall have the meaning ascribed to such term in Section 5.10(d).

"Code" means the United States Internal Revenue Code of 1986, as amended. All references to the Code, U.S. Treasury regulations or other governmental pronouncements shall be deemed to include references to any applicable successor regulations or amending pronouncement.

"Contracts" shall have the meaning ascribed to such term in Section 2.1(d).

"Copyrights" shall have the meaning ascribed to such term in Section 2.1(i).

"Court" shall mean any court, federal, state or local, or arbitration tribunal.

"Cure Costs" shall have the meaning ascribed to such term in Section 2.3(a)(v).

"DOJ" shall mean the Department of Justice.

"Deal Protection Provisions" shall have the meaning ascribed to such term in Section 5.12.

"Deposit Escrow Amount" shall have the meaning ascribed to such term in Section 2.9(a).

"Designation" shall have the meaning ascribed to such term in Section 5.11(c).

"DIP Facility" shall have the meaning ascribed to such term in Section 2.15.

"Dispute Notice" shall have the meaning ascribed to such term in Section 2.16(b).

"Early Funding Date" shall have the meaning ascribed to such term in Section 2.15.

"Employee Benefit Plans" shall mean any "employee benefit plan" within the meaning of Section 3(3) of ERISA and any bonus, deferred compensation, incentive compensation, stock ownership, stock purchase, stock option, phantom stock, vacation, sick leave, retirement, severance, disability, death benefit, hospitalization, cafeteria, tuition reimbursement, scholarship or insurance plan.

"Employee Termination Obligations" shall mean all liabilities, obligations and commitments of each Seller to: (a) pay any compensation, retention, benefit or severance to any officer, director or employee of any Seller, including any retention plan or severance plan approved by the Bankruptcy Court in the Bankruptcy Case and notwithstanding any conversion of the Bankruptcy Case to a Chapter 7 bankruptcy case or (b) accelerate or increase any such compensation, retention, benefit, or severance, upon: (i) a change in control of any Seller or the sale or other disposition of all or substantially all of the assets or business of any Seller; (ii) the confirmation or consummation of the Bankruptcy Cases; or (iii) any termination of employment or other relationship between such Person and any Sellers, in each such case only to the extent that such obligations (i) relate to employees that are employed by any of the Sellers as of the Early Funding Date; and (ii) do not exceed the amount or number set forth with respect thereto in the memo referred to in Section 5.10(d); provided, however, that all retention and severance payments payable to the Tier 1 Employee under Parent's Key Employee Retention Plan shall not be Employee Termination Obligations.

"Employees" shall have the meaning ascribed to such term in Section 5.10(a).

"Equipment" shall have the meaning ascribed to such term in Section 2.1(a).

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, et seq., and the rules and regulations promulgated thereunder.

"Escrow Agent" shall have the meaning ascribed to such term in Section 2.9(a).

"Escrow Agreement" shall have the meaning ascribed to such term in Section 2.9(a).

"Estimated Purchase Price" shall mean the Purchase Price without taking into account the Working Capital Adjustment.

"Excluded Assets" shall have the meaning ascribed to such term in Section 2.2.

"Excluded Liabilities" shall have the meaning ascribed to such term in Section 2.3(b).

"FCC" shall mean the Federal Communications Commission.

"FCC Consent" shall mean the consent by the FCC to the assignment of the FCC Permits in connection with the consummation of the transactions contemplated hereby:

"FCC Permits" shall mean all Permits issued by the FCC held by Sellers.

"Final Closing" shall have the meaning ascribed to such term in Section 2.14(b).

"Final Closing Date" shall have the meaning ascribed to such term in Section 2.14(b).

"Final Order" shall mean an order of the Bankruptcy Court or other Court of competent jurisdiction as to which (a) the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending or (b) in the event that an appeal, writ of certiorari, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court or any other court or adjudicative body shall have been affirmed by the highest court to which such order was appealed, or certiorari has been denied, or from which reargument or rehearing was sought, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; provided, that no order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure or Rule 7024 of the Federal Rules of Bankruptcy Procedure may be filed with respect to such order.

"Final Working Capital Adjustment" shall have the meaning ascribed to such term in Section 2.16(d).

"FMLA" shall have the meaning ascribed to such term in Section 5.10(a).

"FTC" shall mean the Federal Trade Commission.

"GAAP" shall mean generally accepted accounting principles consistently applied.

"Governmental Agency" shall have the meaning ascribed to such term in Section 2.3(b)(v).

"Governmental Authority" shall mean any federal, state or local Governmental Agency or governmental authority, including Courts.

"Guaranteed Amount" shall have the meaning ascribed to such term in Section 2.15.

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

"ILEC" shall mean an incumbent local exchange carrier.

"Independent Auditor" shall have the meaning ascribed to such term in Section 2.16(d).

"Intellectual Property" shall have the meaning ascribed to such term in Section 2.1(i).

"Knowledge" shall mean, with respect to Sellers, the actual knowledge of Joseph D'Angelo, Michael G. Hoffman or Timothy A. Biggio, with a reasonable duty of investigation, and with respect to Buyer, the actual knowledge of Patrick Marburger, Jerry Ou or James Cashiola with a reasonable duty of investigation.

"Law" shall mean (a) all laws, statutes and ordinances of the United States, any foreign country, or any domestic or foreign state, and any political subdivision thereof, including all decisions of Courts having the effect of law in each such jurisdiction and (b) all Regulations.

"Leased Property" shall have the meaning ascribed to such term in Section 3.3(b).

"Liens" shall mean any mortgage, pledge, deed of trust, easement, charge, security interest, encumbrance, lien, right of first refusal, right of first offer, right of use or occupancy, right of consent or approval, right of termination or charge of any kind (including any agreement to give any of the foregoing), any conditional sale or other title retention agreement, any transfer restriction, any lease in the nature thereof or the filing of or agreement to give any financing statement under the Uniform Commercial Code of any jurisdiction.

"Management Services Agreement" shall have the meaning ascribed to such term in Section 5.1(b)(ii).

"Material Adverse Effect" shall mean any result, occurrence, fact, change, event or effect occurring after the date hereof and prior to the Early Funding Date that, individually or in the aggregate with any such other results, occurrences, facts, changes, events or effects, is materially adverse to the Business, Acquired Assets, or liabilities of the Business, in each case, with the Business taken as a whole; provided, however, that no change, event, effect, fact or circumstance shall be deemed (individually or in the aggregate) to constitute, nor shall be taken into account in determining whether there has been or may be, a Material Adverse Effect to the extent that it arises out of, or relates to, (a) a general deterioration in the economy or in the economic conditions prevalent in the industry in which Parent or the Subsidiary Sellers operate, (b) the outbreak or escalation of hostilities involving the United States, the declaration by the United States of a national emergency or war or the occurrence of any other calamity or crisis, including an act of violence or terrorism; (c) the disclosure of the fact that Buyer is the prospective acquirer of the Acquired Assets or assumer of the Assumed Liabilities; (d) the Bankruptcy Case or the announcement or pendency of the transactions contemplated hereby; (e) actions taken by Buyer or any of its Affiliates; or (f) compliance with the terms of, or the taking of any action required by, this Agreement or the other Transaction Documents.

"Material Contracts" shall have the meaning ascribed to such term in Section 3.11(a).

"Non-Transferred Assets" shall mean any Acquired Assets the transfer of which to Buyer prior to the satisfaction of the conditions set forth in Section 6.6(a) would violate the FCC Permits, the State PUC Permits or any applicable Laws including, but not limited to, all

Accounts Receivable, all cash and cash equivalents of any of the Sellers, all network Equipment (including switches, circuits, IRUs, and related supporting Equipment) of any of the Sellers, all inventory (including sales aids, handsets, marketing materials and letterhead) of any of the Sellers, all office Equipment, computer Equipment and furniture of any of the Sellers, all buildings and improvements (whether leased or owned) utilized in the Business, all customer account information and all related data used in the Business, all software licenses and proprietary Seller-designed applications used in support of the operations of the Business, all active Contracts to purchase products and services used in the Business, all Contracts with all customers of the Business, including tariffs, all Permits, all Intellectual Property and all Internet domain names used in the Business, all capital stock of any of the Sellers, all bank accounts, all lock box accounts and banking relationships of any of the Sellers, all insurance policies and related bonds, all letters of credit, surety bonds, and deposits by on behalf of any of the Sellers to provide operating assurance and all Contracts with employees of any of the Sellers.

"Other Excluded Assets" shall have the meaning ascribed to such term in Section 2.2(q).

"Owned Real Property" shall have the meaning ascribed to such term in Section 2.2(p).

"Parent" shall have the meaning ascribed to such term in the first paragraph of this Agreement.

"Patents" shall have the meaning ascribed to such term in Section 2.1(g).

"Permits" shall have the meaning ascribed to such term in Section 2.1(f).

"Permitted Assignment" shall have the meaning ascribed to such term in Section 8.11.

"Permitted Liens" shall mean the following: (a) Liens for Taxes, assessments or other governmental charges not yet due and payable or being contested in good faith by appropriate proceedings; (b) mechanics', carriers', workers', repairers' and other similar liens imposed by law arising or incurred in the ordinary course of business and consistent with past practices of the Sellers for obligations that are not overdue or that are being contested in good faith by appropriate proceedings; (c) in the case of leases of vehicles, rolling stock and other personal property, encumbrances that do not materially impair the operation of the Business at the facility at which such leased equipment or other personal property is located; (d) Liens on leases of real property arising from the provisions of such leases, including, in relation to the Assumed Leased Property, any agreements and/or conditions imposed on the issuance of land use permits, zoning, business licenses, use permits or other entitlements of various types issued by any Governmental Authority, necessary or beneficial to the continued use and occupancy of such Assumed Leased Property or the continuation of the business conducted by Parent or any of the Seller Subsidiary Sellers; (e) pledges or deposits made in the ordinary course of business and consistent with past practices in connection with workers' compensation, unemployment insurance and other social security legislation; (f) deposits to secure the performance of bids, contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business and consistent with past practices; (g) zoning regulations and restrictive covenants and easements of record that do

not detract in any material respect from the value of the Real Property and do not materially and adversely affect, impair or interfere with the use of any property affected thereby; (h) public utility easements of record, in customary form, to serve the Real Property; (i) landlords' Liens in favor of landlords under the leases with respect to the Assumed Leased Property that secure Assumed Liabilities; (j) mortgages, deeds of trust and other security instruments, and ground leases or underlying leases covering the title, interest or estate of such landlords with respect to the Assumed Leased Property and to which the leases with respect to the Assumed Leased Property are subordinate; and (k) Liens described on Exhibit A to the extent that the Acquired Assets shall be transferred free and clear of such Liens pursuant to the Sale Order.

"Person" shall mean an individual, partnership, limited liability company, corporation, joint stock company, trust, estate, joint venture, association or unincorporated organization, or any other form of business or professional entity.

"Petitions" shall have the meaning ascribed to such term in the recitals hereof.

"Petition Date" shall mean the date that each of the Sellers commenced their respective Bankruptcy Case before the Bankruptcy Court.

"Professional Fees" shall mean compensation for fees or reimbursement of expenses of any Person in the Bankruptcy Case under Sections 327, 328, 329, 330, 331, 364, 503 or 506 of the Bankruptcy Code or otherwise (a) excluding such reasonable fees and expenses of the Sellers' Advisors that are incurred subsequent to the entry of the Sale Order in connection with the implementation of this Agreement, the Management Services Agreement or the transactions contemplated hereby or thereby, and which have been approved by the Bankruptcy Court, including with respect to (i) motions to assume or assign Assumed Contracts, (ii) motions to reject Contracts that are not designated to be assumed, (iii) defense of motions for relief from stay, if the subject matter of such motion relates to this Agreement, the Management Services Agreement or the transactions contemplated hereby or thereby, (iv) the fees and expenses of Alvarez & Marsal in the operation of the Business in a monthly amount not to exceed the monthly amount charged to Sellers as of the date hereof, or (v) any actions requested to be taken by any of the Sellers by Buyer and (b) specifically including the costs and expenses of FTI, Fulbright & Jaworski, Xroads Solutions, Carrington Coleman or other Advisors to parties other than the Sellers, unless such fees and expenses are incurred at Buyer's direction. Nothing herein shall in any way limit any obligations of the Sellers' bankruptcy estate on the account of administrative expenses of professionals to the extent approved by the Bankruptcy Court.

"Property Taxes" shall have the meaning ascribed to such term in Section 2.12.

"Purchase Price" shall mean the sum of (a) eighty two million one hundred thousand dollars (\$82,100,000.00); and (b) the Working Capital Adjustment; provided, however, that if the Bankruptcy Court does not enter the Sale Order by July 31, 2005, then the Purchase Price shall be further reduced by three million five hundred thousand dollars (\$3,500,000).

"Purchase Price Escrow Amount" shall have the meaning ascribed to such term in Section 2.15.

"Real Property" shall mean all parcels of land and all buildings, structures, improvements and fixtures thereon, together with all rights of way, easements, privileges, and other appurtenances pertaining or belonging thereto, whether owned in fee by the Sellers or leased to any of the Sellers.

"Regulation" shall mean any rule or regulation of any Governmental Authority having the effect of law.

"Retained PARs" shall have the meaning ascribed to such term in Section 5.16(a).

"RTFC" means the Rural Telephone Finance Cooperative, or its assigns.

"Sale Motion" shall have the meaning ascribed to such term in Section 5.11(b).

"Sale Order" shall have the meaning ascribed to such term in Section 5.11(b).

"SEA" shall have the meaning ascribed to such term in Section 5.2(b).

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Seller Defined Contribution Plan" shall have the meaning ascribed to such term in Section 5.10(c).

"Seller Disclosure Schedule" shall have the meaning ascribed to such term in Article III.

"Sellers" shall have the meaning ascribed to such term in the first paragraph of this Agreement.

"State PUC" shall mean any state or local telecommunications regulatory authority having regulatory authority over the Business or the Acquired Assets, in any given jurisdiction.

"State PUC Consent" means the grant by any State PUC of its consent to the assignment of the State PUC Permits or any Non-Transferred Assets associated with such State PUC Permits, in connection with the consummation of the transactions contemplated hereby.

"State PUC Permits" shall mean all Permits issued or granted by the State PUC held by Sellers in each applicable jurisdiction, including those set forth in the Seller Disclosure Schedule.

"Subsidiary Seller" shall have the meaning ascribed to such term in the first paragraph of this Agreement.

"Successful Bid" shall mean the highest and best binding offer to acquire the Acquired Assets and assume the Assumed Liabilities, which is ultimately approved by the Bankruptcy Court.

"Taxes" shall mean all income taxes and all other taxes, charges, imposts, tariffs, fees, levies or other similar assessments or liabilities, including income taxes, ad valorem taxes, excise taxes, withholding taxes or other taxes of or with respect to gross receipts, premiums, real

property, personal property, windfall profits, sales, use, transfers, licensing, employment, payroll and franchises imposed by or under any Law; and such terms shall include any interest, fines, penalties, assessments or additions to tax resulting from, attributable to or incurred in connection with any such tax or any contest or dispute thereof.

"Taxing Authority" shall mean any Governmental Authority exercising any Taxing authority or Tax regulatory authority.

"Tax Return" shall mean all returns, declarations, reports, estimates, information returns and statements required to be filed by or with respect to any Seller in respect of Taxes, including Federal, state, local or foreign Income Tax returns filed on a consolidated, combined or unitary basis.

"Telecommunications Laws" shall mean: (i) the Communications Act of 1934, as amended (47 U.S.C. Section 151 et seq.), the Federal Communications Commission rules and regulations applicable to Parent, any of the Subsidiary Sellers or the Business; and (ii) the telecommunications laws, rules and regulations of the various states in which the Sellers do business and which are applicable to Business.

"Termination Fee" shall have the meaning ascribed to such term in Section 5.12(b).

"Trademarks" shall have the meaning ascribed to such term in Section 2.1(h).

"Transaction Documents" shall mean this Agreement and any other agreements or documents the execution of which are contemplated by this Agreement.

"Transferred Assets" shall have the meaning ascribed to such term in Section 2.4.

"Transferred Employees" shall have the meaning ascribed to such term in Section 5.10(a).

"USERRA" shall have the meaning ascribed to such term in Section 5.10(a).

"USF Credits" shall mean the credits held by Sellers with respect to overpayments of Universal Service Fees.

"WARN" shall have the meaning ascribed to such term in Section 5.10(f)(i).

"Working Capital Adjustment" shall mean the difference between (a) Sellers' net working capital as of April 30, 2005, as reflected in Exhibit G hereto (the "4/30 Working Capital Statement"), and (b) Seller's net working capital as 12:01 a.m. on the Early Funding Date; provided, however, that for purposes of this definition, net working capital shall mean all consolidated current assets of the Sellers, less all consolidated current liabilities of Sellers and shall be calculated (i) by excluding (x) the items listed in Section 2.2(a) hereof and (y) all gross Accounts Receivable that are more than 60 days old; (ii) without reference to (a) Professional Fees or other non-ordinary course expenses; and (b) liabilities or obligations arising prior to the Petition Date, and (iii) other than as modified by this definition, in accordance with consolidated

balance sheets for the Sellers, including Exhibit G, prepared in accordance with GAAP, applied consistently in the manner in which GAAP was applied in the preparation of the 4/30 Working Capital Statement.

"Working Capital Statement" shall have the meaning ascribed to such term in Section 2.16(a).

Section 1.2 Rules of Construction.

(a) Unless the context otherwise requires, as used in this Agreement (i) a term has the meaning assigned to it in this Agreement and (ii) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP.

(b) The inclusion of any information in the Seller Disclosure Schedule shall not be deemed an admission or acknowledgment, in and of itself and solely by virtue of the inclusion of such information in the Seller Disclosure Schedule, that such information is required to be listed in the Seller Disclosure Schedule or that such items are material to the Parent, any of the Subsidiary Sellers or the Business. The Seller Disclosure Schedule is arranged in sections merely for convenience, and the disclosure of an item in one section of the Seller Disclosure Schedule as an exception to a particular representation or warranty shall be deemed adequately disclosed as an exception with respect to all other representations or warranties to the extent that the relevance of such item to such representations or warranties is reasonably apparent on the face of such item, notwithstanding the presence or absence of an appropriate section of the Seller Disclosure Schedule with respect to such other representations or warranties or an appropriate cross reference thereto.

(c) Each of the parties hereto acknowledges that it has been represented by independent counsel of its choice throughout all negotiations that have preceded the execution of this Agreement and that it has executed the same with consent and upon the advice of said independent counsel. Each party and its counsel cooperated in the drafting and preparation of this Agreement and the documents referred to herein, and any and all drafts relating thereto shall be deemed the work product of the parties and may not be construed against any party by reason of its preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against any party that drafted it is of no application and is hereby expressly waived.

(d) All references in this Agreement to Exhibits, Schedules, Annexes, Articles, Sections, subsections and other subdivisions refer to the corresponding Exhibits, Schedules, Annexes, Articles, Sections, subsections and other subdivisions of this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any Articles, Sections, subsections or other subdivisions of this Agreement are for convenience only, do not constitute any part of such Articles, Sections, subsections or other subdivisions, and shall be disregarded in construing the language contained therein. The words "*this Agreement*," "*herein*," "*hereby*," "*hereunder*" and "*hereof*" and words of similar import, refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The words "*this Section*," "*this subsection*" and words of similar import, refer only to the Sections or subsections hereof in

which such words occur. The word "*including*" (in its various forms) means "*including, without limitation.*" Pronouns in masculine, feminine or neuter genders shall be construed to state and include any other gender and words, terms and titles (including terms defined herein) in the singular form shall be construed to include the plural and vice versa, unless the context otherwise expressly requires. Unless the context otherwise requires, all defined terms contained herein shall include the singular and plural and the conjunctive and disjunctive forms of such defined terms.

ARTICLE II SALE AND PURCHASE OF ASSETS

Section 2.1 Sale and Purchase of Assets. Except for the Excluded Assets and subject to the terms and conditions and in reliance upon the representations, warranties, covenants and agreements contained herein, and pursuant to the Sale Order, Sellers shall sell, transfer, assign, and deliver to Buyer, and Buyer shall purchase, acquire, and accept from Sellers, at 12:01 a.m. on the Closing Date (except with respect to Non-Transferred Assets, which shall be transferred as of 12:01 a.m. on the Final Closing Date), all of each Seller's right, title and interest in and to the assets, contracts and properties as the same shall exist as of the Closing (or with respect to Non-Transferred Assets, the Final Closing) (collectively, the "Acquired Assets") of each Seller of every kind, type or designation that are used in, or held for use in, the operation of the Business, whether tangible or intangible, real, personal or mixed, wherever located, free and clear of all Liens, Excluded Liabilities and other interests, except Permitted Liens and Assumed Liabilities, in accordance with Sections 363 and 365 of the Bankruptcy Code, including, without limitation:

(a) all commercial and non-commercial vehicles, all machinery and equipment and spare parts, furniture, fittings, fixtures, office supplies, office equipment and other personal property of any kind or type used in the Business, whether physically located on the Real Property or elsewhere (the "Equipment");

(b) without limiting the provisions of Section 2.16, all billed and unbilled accounts receivable, notes receivable and other rights to payment in connection with the Business existing as of the Closing (or with respect to Non-Transferred Assets, the Final Closing), including Acquired PARs, and including, without limitation, any payments received with respect thereto after the Closing Date (or with respect to Non-Transferred Assets, the Final Closing Date), unpaid interest accrued on any such accounts receivable and any security or collateral relating thereto, and any unbilled receivable for work in progress (the "Accounts Receivable") and all inventory;

(c) all marketing and promotional brochures and materials and other printed or written materials in any form or medium relating to Sellers' ownership or operation of the Business;

(d) subject to Section 5.11(c) or otherwise with Buyer's express written consent in accordance with this Agreement, all rights under (i) those agreements, contracts, arrangements, unexpired leases of real and personal property, licenses and purchase orders

described on Schedule 2.1(d), including without limitation the IRU acquired from MCI, fka WorldCom (collectively, the "Contracts") and (ii) all agreements, contracts, arrangements, unexpired leases of real and personal property, licenses and purchase orders relating to the Business that are entered into by Seller between the date of this Agreement and 12:01 a.m. on the Final Closing Date, to the extent such Contracts may be assumed and assigned under Section 365 of the Bankruptcy Code ((i) and (ii) collectively, the "Assumed Contracts");

(e) all of the books and records of the Business, wherever located, relating to the Business or the Acquired Assets, including the following: sales records, books of account, files, invoices, inventory records, accounting records, product specifications, drawings, surveys, engineering, maintenance, operating and production records, advertising materials, environmental reports, customer complaint logs, customer and supplier lists, cost and pricing information, supplier lists, computer records and databases, business plans, catalogs, quality control records and manuals, blueprints, research and development files, laboratory books, patent and trademark files and litigation files, employee records, other than records kept solely for Tax purposes and excluding any of the foregoing relating primarily to the Excluded Assets or the Excluded Liabilities;

(f) to the extent transfer is permitted under the Bankruptcy Code or other applicable Law, all permits, approvals, franchises, licenses or other rights granted by any Governmental Authority and necessary for the lawful ownership of the Acquired Assets or other lawful conduct of the Business as currently conducted (the "Permits");

(g) all patents and patent applications, together with the goodwill associated therewith and all rights deriving therefrom or related thereto (the "Patents");

(h) all trademarks, trademark applications, trademark registrations, trade names, brand names and service marks, together with the goodwill associated therewith and all rights deriving therefrom or related thereto (the "Trademarks");

(i) all registered copyrights or unregistered copyrights, together with the goodwill associated therewith and all rights deriving therefrom or related thereto (the "Copyrights");

(j) all unpatented formulas, know-how, concepts, manufacturing methods and processes, inventions, discoveries, trade secrets, improvements and other technology in which any Seller has any rights (whether owned or not), together with the goodwill associated therewith and all rights deriving therefrom or related thereto (together with the Patents, the Trademarks and the Copyrights, the "Intellectual Property");

(k) all goodwill and other intangible assets relating to the Acquired Assets and the Business,

(l) all rights under manufacturers' and vendors' guaranties, indemnities and warranties relating to items included in the Acquired Assets and all similar rights against third parties relating to items included in the Acquired Assets;

(m) all rights, claims, causes of action, choses in action, rights of recovery, defenses and rights of recoupment or set-off against any Person arising under the Acquired Assets, but specifically excluding all Avoidance Actions and the litigation described on Seller Disclosure Schedule 3.5 (other than those set forth under "ILEC Litigation" or otherwise related to Acquired PARs); provided, however, that pursuant to Section 2.3(a)(v) the Sellers have covenanted and agreed not to bring any Avoidance Action against any party to any Assumed Contract arising out of an Assumed Contract;

(n) all credits, prepaid expenses, escrowed funds, deferred charges, advance payments, retainers on construction contracts, security deposits (including without limitation, security deposits relating to the Real Property leases that are Assumed Contracts and including deposits relating to utilities) and prepaid items (and, in each case, security interests or liens from third parties relating thereto), including all such items that relate to or arise under the Assumed Contracts or other Acquired Assets;

(o) all deposits or surety, performance or other bonds existing with respect to the Assumed Contracts and the bonds described on Seller Disclosure Schedule 3.12;

(p) all rights to all corporate names, d/b/a's or other identifiers, including the names set forth on Schedule 2.1(p), as well as all logos, URLs, IP addresses, domain names and registrations and other network, internet and email identifiers;

(q) all vendor allowances, including volume and promotional incentive allowances and any other credits of Sellers received by or accruing to Sellers under or related to the Assumed Contracts, to the extent transferable;

(r) all cash and cash equivalents deposited into or to be deposited into the Funding Account (as defined in the Management Services Agreement);

(s) subject to Section 2.2(a), all bank accounts, sweep accounts, lock-box accounts and similar accounts at financial institutions, other than those set forth on Schedule 2.1(s); and

(t) all casualty, property and business insurance policies, programs, reserves and related bonds of any nature (and any claims payable in respect thereof), but specifically excluding directors and officers and errors and omissions insurance, covering the Business or the Acquired Assets after the Closing (or with respect to the Non-Transferred Assets, the Final Closing Date).

Section 2.2 Excluded Assets. Notwithstanding anything to the contrary contained in this Agreement, each Seller shall retain all of its right, title and interest in and to, and there shall be excluded from the sale, transfer, assignment and delivery to Buyer hereunder, the following assets and properties (collectively, the "Excluded Assets");

(a) All cash, cash equivalents and other types of investments, including certificates of deposit and marketable securities, other than cash and cash equivalents deposited or to be deposited in the Funding Account (referred to in the Management Services Agreement,

such Funding Account to be established on or before the Early Funding Date) from and after the Early Funding Date, taking into account all items in float in the banking system as of the close of business on the Business Day immediately prior to the Early Funding Date.

- (b) all bank accounts and similar accounts set forth on Schedule 2.1(s).
- (c) any refunds, claims for refunds or rights to receive refunds from any Government Authority (including USF Credits) with respect to income, franchise or other Taxes relating to the Business or the Acquired Assets paid or to be paid by a Seller or any of its Affiliates relating to a period, or portions thereof, ending on or prior to the Closing Date (or with respect to Non-Transferred Assets, the Final Closing Date);
- (d) all insurance policies, programs, reserves and related bonds of any nature related to the Business other than as set forth in Section 2.1(t) and other than insurance proceeds and condemnation awards to which Buyer is entitled pursuant to Section 2.11(b) or which are set forth as a current asset on the Working Capital Statement;
- (e) any records or copies thereof (including accounting records) related to Income Taxes paid or payable by a Seller or any of its Affiliates;
- (f) the organizational documents and corporate minute books of each Seller and all debt and equity securities issued by each Seller and all debt securities held by each Seller;
- (g) such records as relate primarily to (i) the items set forth in the foregoing subsections (a), (c), (d), and (e), (ii) the Excluded Liabilities or (iii) the negotiation and consummation of the transactions contemplated by this Agreement;
- (h) all property, rights, demands and causes of action of Sellers under this Agreement and under or related to any agreements, contracts, arrangements, unexpired leases of real and personal property, licenses and purchase orders that is not an Assumed Contract, the Telelobe Set Aside (as defined in the First Amended and Restated Credit Agreement, dated as of October 7, 2004, between Parent and the RTFC), the USF Credits (to the extent provided in Section 2.2(a)), the litigation between Parent and each of Southwestern Bell and its Affiliates, BellSouth and its Affiliates and Verizon and its Affiliates set forth on Seller Disclosure Schedule 3.5, the litigation between BCE, Inc. and its Affiliates and Parent and its Affiliates set forth on Seller Disclosure Schedule 3.5, and all litigation related to any claims against any present, future or former directors and officers of any of Sellers (in their capacity as such) or insurers providing (either presently, formerly or in the future) directors and officers insurance to any of the Sellers;
- (i) all Employee Benefit Plans and all assets or funds held in trust for or otherwise associated with any Employee Benefit Plans;
- (j) the consideration received by Sellers hereunder;
- (k) any and all claims, causes of action, avoidance actions, counterclaims, demands, controversies, costs, debts, sums of money, accounts, reckonings, bonds, bills, damages, obligations, liabilities, objections, legal proceedings, equitable proceedings, executions

of any nature, type, or description, choses in action, rights of recovery, and rights of recoupment or set-off against any Person, including any Avoidance Actions, in each case, that do not arise under the Acquired Assets; provided, however, that pursuant to Section 2.3(a)(v) the Sellers have covenanted and agreed not to bring any Avoidance Action against any party to any Assumed Contract arising out of such Assumed Contract;

(l) all deferred Tax assets relating to Sellers, the Business or the Acquired Assets;

(m) all Permits to the extent that any are not transferable to Buyer under Applicable Law;

(n) all of each Seller's demands and causes of action that arise under or are related to the Transaction Documents; or

(o) any agreements, contracts, arrangements, unexpired leases of real and personal property, licenses and purchase orders that is not an Assumed Contract;

(p) the Real Property that is owned in fee by any Seller listed on Schedule 2.2(p) (the "Owned Real Property");

(q) all items listed on Schedule 2.2(q) (the "Other Excluded Assets"); and

(r) all Retained PARs

Section 2.3 Assumption of Liabilities.

(a) On the terms and subject to the conditions set forth in this Agreement and in the Management Services Agreement, at the Closing Date (except with respect to liabilities or obligations relating to Non-Transferred Assets, in which case it will be as of the Final Closing Date), Buyer shall assume and thereafter pay, honor, and discharge when due and payable the following obligations, debts, charges, fees, expenses, disbursements, liabilities, and commitments of each Seller (collectively, the "Assumed Liabilities");

(i) all liabilities and obligations of each Seller occurring, arising out of or related to the ownership and operation of the Business and the Acquired Assets (the "Accounts Payable"), but in each case only to the extent that the event or state of facts giving rise to such liability or obligation occurred subsequent to the Petition Date and in the ordinary course of the Business or at the direction of Buyer as the Manager under the Management Services Agreement;

(ii) all liabilities and obligations under the terms of the Assumed Contracts, including, without limitation, any obligations under such Assumed Contracts to provide satisfactory surety bonds, performance bonds, letters of credit, or any other form of financial assurance or assurances of future performance;

(iii) all liabilities and obligations relating to accrued payroll of employees of Sellers for the most recent payroll period as of the Final Closing Date and all sales and marketing expenses, including commissions, for all existing marketing programs relating to the Business, but in each case only to the extent that the event or state of facts giving rise to such liability or obligation occurred subsequent to the Petition Date;

(iv) all liabilities and obligations related to any Permitted Liens to the extent that such obligations or liabilities have not previously been satisfied and are secured by Acquired Assets;

(v) all liabilities, obligations and commitments of each Seller for all cure, compensation and reinstatement costs or expenses of or relating to the assumption and assignment of the Assumed Contracts, as and to the extent required under Section 365 of the Bankruptcy Code ("Cure Costs"), all of which Cure Costs shall be payable by Buyer; provided, however, that Sellers agree to waive all Avoidance Actions they may have against all non-Seller parties to the Assumed Contracts arising out of an Assumed Contract;

(vi) any liability or obligation in respect of any Employee Benefit Plans or severance costs incurred at the direction of Buyer for employees who are employed by any of the Sellers on the date hereof and are terminated after the Early Funding Date; and

(vii) any liability or obligation that is an Employee Termination Obligation.

Notwithstanding anything in this Agreement to the contrary, the Assumed Liabilities shall not include any liabilities or obligations not otherwise specifically assumed in this Agreement. The assumption by Buyer of the Assumed Liabilities shall in no way expand the rights or remedies of any third Person against Buyer or Sellers as compared to the rights and remedies that such third Person would have had against Seller (absent the filing of the petitions for Bankruptcy by Sellers) had Buyer not assumed such liabilities. Without limiting the generality of the foregoing, the assumption by Buyer of the Assumed Liabilities shall not create any third-party beneficiary rights (except as otherwise set forth in the Assumed Contracts) other than with respect to the specific Person whose liability is expressly assumed hereunder and then only to the extent so assumed as provided herein.

(b) Sellers and Buyer expressly covenant and agree that Buyer shall not be or become liable for any of the liabilities or obligations of Sellers or their Affiliates, except to the extent any liabilities may be expressly included, in whole or part, within the definition of Assumed Liabilities or specifically assumed by Buyer elsewhere in this Agreement (collectively, the "Excluded Liabilities"), including without limitation the following:

(i) any liability or obligation in respect of the Excluded Assets;

(ii) any liability or obligation related to litigation (whether pending or not currently pending, threatened or not currently threatened, asserted or not currently asserted) asserting liability of any kind of Sellers or any of their Affiliates, officers, directors, employees, agents and brokers, attorneys, accountants, auditors, investment or financial advisors, investment

bankers, consultants, managers and other Persons (the "Advisors"); provided that Buyer shall be liable for any Cure Costs relating to or arising out of an Assumed Contract;

(iii) any liability or obligation to indemnify any director, officer, employee, agent, Advisor, or any Affiliate of Sellers or any other Person, except as otherwise set forth in the Assumed Contracts;

(iv) any liability or obligation for (i) Taxes of Sellers or any of their Affiliates or (ii) Taxes attributable to the Acquired Assets or the Business, in each case, relating to any period or any portion of any period ending on or prior to the Petition Date;

(v) without limiting Section 2.3(b)(vi), any liability or obligation in respect of Laws (including, without limitation, all Telecommunications Laws) (i) to any third Person (including, without limitation, any foreign, U.S. federal, state, county, municipal or other governmental department, regulatory or administrative agency, body, authority, entity, commission, unit or subdivision ("Governmental Agency")) with respect to conduct taking place or conditions existing prior to the Closing Date or (ii) to pay any fine, penalty or monetary amount to any Person (including, without limitation, any Governmental Agency) with respect to conduct taking place or conditions existing prior to the Closing Date;

(vi) any liability or obligation of Seller or any of their Affiliates relating to or arising under any Regulation, order, settlement agreement or authority requirement, which relates to or otherwise imposes liability or standards of conduct concerning the environment, health, safety or hazardous substances, including without limitation, discharges, emissions, releases or threatened releases of noises, odors or any hazardous substances, whether as matter or energy, into ambient air, water, or land, or otherwise relating to the manufacture, processing, generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of hazardous substances, including without limitation the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Superfund Amendments and Reauthorization Act of 1986, the Hazardous Material Transportation Act, the Resource Conservation and Recovery Act of 1976, the Toxic Substances Control Act, the Federal Water Pollution Control Act, the Clean Water Act, the Clean Air Act, the Occupational Safety and Health Act, any so-called "Superlien" law, all as now or hereafter amended or supplemented, and the Regulations promulgated thereunder, and any other similar Federal, state or local Regulations;

(vii) any liability or obligation in respect of agreements, and any amendments thereto, not included in the Acquired Assets;

(viii) any liability or obligation for deferred rent with respect to any period ending on or prior to the Closing Date (or with respect to Non-Transferred Assets, the Final Closing Date);

(ix) any liability or obligation for payables or other amounts due from one Seller to another Seller or from a Seller to an Affiliate of any Seller, other than liabilities or obligations arising under Assumed Contracts;

(x) any liability or obligation for any Professional Fees or any other non-ordinary course liability or obligation incurred in connection with Sellers' Bankruptcy Case;

(xi) all liabilities, obligations and commitments of each Seller, whether direct or indirect, for contribution, indemnity, restitution, or any other form of reimbursement, related to, resulting from, or revived by virtue of any Avoidance Action;

(xii) any liability or obligation in respect of any Employee Benefit Plan or severance cost that is not (i) an Employee Termination Obligation or (ii) described in Section 2.3(a)(vi); and

(xiii) any liability of any Seller on account of intercompany claims.

The listing of any specific item or matter as an Excluded Liability shall in no respect (x) limit the generality of the terms of Section 2.3(a) hereof or (y) create any implication that any items or matters not so listed is an Assumed Liability, it being the intention of the parties that Buyer assume only those liabilities expressly set forth in Section 2.3 hereof.

Section 2.4 Non-Transferred Assets Distinguished From Transferred Assets. Notwithstanding the foregoing provisions of Article II, and subject to Section 5.1(b) and the Management Services Agreement, the parties hereto agree that Sellers shall retain the Non-Transferred Assets pending receipt of the FCC Consents and the State PUC Consents. Notwithstanding anything to the contrary contained herein, the Assumed Contracts shall be Non-Transferred Assets and the Assumed Liabilities under Section 2.3(a)(ii) or Section 2.3(a)(v) (other than Cure Costs for Assumed Contracts assumed by any Seller pursuant to Section 5.11) shall be assumed by Buyer at the Final Closing. During the period following the Closing that Sellers own the Non-Transferred Assets, Buyer shall provide management services to Sellers pursuant to the Management Services Agreement. All Acquired Assets that are transferred to the Buyer at the Closing Date shall be referred to herein as the "Transferred Assets."

Section 2.5 Deliveries by Sellers at the Closing. At the Closing, each Seller shall deliver to Buyer, as applicable, but subject to Section 2.4 hereof, the following duly executed documents:

(a) a bill of sale and assignment and assumption agreement providing for the assignment and conveyance by Sellers of all Transferred Assets and the assumption by Buyer of the Assumed Liabilities (the "Bill of Sale and Assumption Agreement") in substantially the form of Exhibit D hereto;

(b) the certificate of Parent referred to in Section 6.2(a) hereof; and

(c) as Buyer may reasonably request, any additional assignments or other instruments of transfer, assignment or conveyance reasonably necessary to convey, transfer and assign title, together with possession, to the Transferred Assets to Buyer as contemplated by this Agreement, all in form and substance reasonably satisfactory to Buyer.

The documents delivered by Sellers pursuant to this Section 2.5 shall constitute the "Closing Documents."

Section 2.6 Deliveries by Buyer at the Closing. At the Closing, Buyer shall deliver to Sellers (subject to Section 2.4 hereof) the following:

- (a) an executed Bill of Sale and Assumption Agreement;
- (b) the certificate of Buyer referred to in Section 6.3(a) hereof; and
- (c) as Sellers may reasonably request, any other agreements or instruments of assumption reasonably necessary to effect the assumption by Buyer of the Assumed Liabilities as contemplated by this Agreement.

The documents delivered by Buyer pursuant to this Section 2.6 shall also constitute the Closing Documents.

Section 2.7 Deliveries by Seller at the Final Closing. At the Final Closing, Sellers shall deliver to Buyer a Bill of Sale and Assumption Agreement covering all Non-Transferred Assets and related Assumed Liabilities, in substantially the form of Exhibit D hereto.

Section 2.8 Deliveries by Buyer at the Final Closing. At the Final Closing, Buyer shall deliver to Sellers a Bill of Sale and Assumption Agreement covering all Non-Transferred Assets and related Assumed Liabilities, in substantially the form of Exhibit D hereto.

Section 2.9 Escrow Agreement for Earnest Money.

(a) Buyer, Parent and The Bank of New York Trust Company, N.A., as escrow agent (the "Escrow Agent"), have executed an escrow agreement in substantially the form of Exhibit E attached hereto (the "Escrow Agreement") and within three (3) Business Days of the execution of this Agreement Buyer shall have deposited seven million five hundred thousand dollars (\$7,500,000.00) (the "Deposit Escrow Amount") as earnest money into an escrow account to be governed by the terms of the Deposit Escrow Agreement and this Agreement. At the Closing Date, the Deposit Escrow Amount shall be paid to Sellers as part of the Purchase Price in accordance with the Deposit Escrow Agreement and this Agreement. Buyer agrees that Sellers may direct the Escrow Agent to pay the Termination Fee from the Deposit Escrow Amount if Buyer is selected as the winning bidder; provided, however, only if any amount paid in such manner is either: (i) fully credited against the Purchase Price; or (ii) repaid by Seller to Buyer if Buyer is entitled to a refund of the Deposit Escrow Amount.

(b) If, prior to the entry of the Sale Order, Buyer should breach this Agreement in a manner that gives rise to a termination right pursuant to Section 7.1(a)(v) on the part of Parent, then Parent shall have the right to terminate this Agreement pursuant to Section 7.1(a)(v) and to retain the Deposit Escrow Amount as liquidated damages. If, after the entry of the Sale Order and prior to the Early Funding Date, Buyer should breach this Agreement in a manner that gives rise to a termination right pursuant to Section 7.1(a)(v) on the part of Parent, then Parent shall have the right to terminate this Agreement pursuant to Section 7.1(a)(v) and to

seek to recover damages for a breach of contract (it being understood, however, that such damages shall not exceed the Purchase Price). The Escrow Agent shall hold the Deposit Escrow Amount pending either a final judicial determination of whether Buyer breached the Agreement and the amount, if any, of such damages or liquidated damages payable to Parent, as applicable, or a settlement among the parties.

(c) In the event the parties fail to close this transaction for any reason other than a breach of this Agreement by Buyer, then the Escrow Agent shall return the Deposit Escrow Amount (unless previously distributed pursuant to Section 2.10(a)) and any accrued interest thereon to Buyer within 3 Business Days after the termination of this Agreement.

Section 2.10 Payment of Purchase Price; Delivery of Closing Documents; Allocation of Purchase Price.

(a) Upon the Closing Date, Buyer and Sellers shall deliver a joint written notice to the Escrow Agent directing the Escrow Agent to (i) pay to the Parent (on behalf of Sellers) by wire transfer of immediately available funds to an account or accounts designated by Parent (on behalf of Sellers) a sum equal to fifty percent (50%) of the Purchase Price (as adjusted pursuant to Section 2.16(e)), which shall include, without duplication, the Deposit Escrow Amount, and (ii) deliver to the Parent or Buyer, as the case may be, the applicable Closing Documents.

(b) Upon the Final Closing Date, Buyer shall pay to Parent (on behalf of Sellers) by wire transfer of immediately available funds to an account or accounts designated by Parent (on behalf of Sellers) the total Purchase Price (as adjusted pursuant to Section 2.16(e)), less the distribution made by the Escrow Agent under paragraph (a), above.

(c) Within 30 days after the Final Closing, Buyer and Seller shall agree upon an allocation of the Purchase Price among the Acquired Assets and the Assumed Liabilities pursuant to Section 1060 of the Code.

Section 2.11 Possession and Risk of Loss.

(a) The risk of any material loss, damage, impairment, confiscation, or condemnation of the Acquired Assets from any cause whatsoever shall be borne by Sellers at all times prior to the Early Funding Date. In the event of any such material loss, damage, impairment, confiscation, or condemnation, whether or not covered by insurance, Sellers shall promptly notify Buyer of such material loss, damage, impairment, confiscation, or condemnation.

(b) If Sellers, at their expense, substantially repair, replace, or restore such Acquired Assets to their prior condition before the Early Funding Date, Sellers shall be entitled to all insurance proceeds and condemnation awards, if any, by reason of such award or loss. To the extent that the Sellers do not substantially repair, replace or restore such Acquired Assets to their prior condition before the Early Funding Date, Buyer shall be entitled to all insurance proceeds and condemnation awards, if any remain, by reason of such award or loss.

(c) No provision of this Section 2.11 shall be construed to effect or permit an assignment or transfer of control related to the Non-Transferred Assets or the services associated with the Non-Transferred Assets prior to the Final Closing.

Section 2.12 Property Taxes. The Working Capital Adjustment shall reflect that all ad valorem Taxes, real property Taxes, personal property Taxes, and similar obligations ("Property Taxes") attributable to the Acquired Assets with respect to the tax period which includes the Closing Date shall be apportioned as of the Closing Date between Sellers and Buyer determined by prorating such Property Taxes on a daily basis over the entire tax period. In the event the amount of Property Taxes attributable to any Acquired Asset for such tax period has not been determined as of the Closing Date, such apportionment shall be based upon (i) the valuation for such Acquired Asset set forth in the Property Tax rendition for such tax period (or if none, a mutually agreed upon valuation consistent with Exhibit F) and (ii) the applicable Property Tax rates effective for the most recent prior tax period. Except as specified herein as to the allocation of taxes between Buyer and Seller, nothing in the Agreement or any related document or proceeding shall obligate Sellers to pay any Taxes (other than transfer taxes, if any, in accordance with Section 2.13) including Property Taxes.

Section 2.13 Transfer Taxes. In connection with their filing of a motion seeking entry of the Sale Order, the Debtor also shall request that the Bankruptcy Court order that the transfer of the Acquired Assets be subject to the benefits of Section 1146(c) of the Bankruptcy Code. If authorized by the Bankruptcy Court in accordance with Section 1146(c) of the Bankruptcy Code, the making or delivery of any instrument of transfer under Section 1129 of the Bankruptcy Code shall not be taxed under any law imposing a stamp tax or similar tax, and the instruments transferring the Acquired Assets to Buyer shall contain an endorsement substantially similar to the following:

"This [instrument] has been authorized pursuant to Order of the United States Bankruptcy Court for the Northern District of Texas relating to a plan of reorganization for the Grantor and is exempt from transfer taxes, stamp taxes or similar taxes pursuant to 11 U.S.C. § 1146(c)."

In the event real estate transfer Taxes are required to be paid in order to record the deeds to be delivered to Buyer in accordance herewith, or in the event any such Taxes are assessed at any time thereafter, such real estate transfer Taxes incurred as a result of the transactions contemplated hereby shall be paid by Seller. In the event sales, use or other transfer Taxes are assessed at Closing or at any time thereafter on the transfer of any other Acquired Assets, such Taxes incurred as a result of the transactions contemplated hereby shall be paid by Buyer. Buyer and Sellers shall cooperate in providing each other with any appropriate resale exemption certifications and other similar documentation.

Section 2.14 Closing and Final Closing.

(a) The closing of the transfer of the Transferred Assets contemplated hereby (the "Closing") shall be held at the offices of Vinson & Elkins L.L.P., 2001 Ross Avenue, Suite

3700, Dallas, Texas 75201, at 10:00 a.m. on the second Business Day after the later of (i) the Early Funding Date and (ii) the expiration or termination of the statutory waiting period under the HSR Act or at such other place or on such other date and time upon which the Parent and Buyer may agree. The actual date on which the Closing takes place is referred to herein as the "Closing Date." The Closing shall be deemed to be effective as of 12:01 a.m. on the Closing Date.

(b) The closing of the transfer of the Non-Transferred Assets to Buyer from Sellers (the "Final Closing") shall be held at the offices of Vinson & Elkins L.L.P., 2001 Ross Avenue, Suite 3700, Dallas, Texas 75201, at 10:00 a.m. on the second Business Day after satisfaction or waiver of the conditions set forth in Section 6.6 or at such other place or on such other date and time upon which the Parent and Buyer may agree. The actual date on which the Final Closing takes place is referred to herein as the "Final Closing Date." The Final Closing shall be deemed to be effective as of 12:01 a.m. on the Final Closing Date.

(c) Notwithstanding any of the provisions set forth in this Agreement, no provision in this Agreement shall be construed to effect or permit an assignment or transfer of control related to the Non-Transferred Assets or the services associated with the Non-Transferred Assets prior to the Final Closing, and all provisions of this Agreement shall be interpreted in a fashion consistent with all applicable Laws and Regulations.

Section 2.15 Early Funding Date. No later than the second Business Day after the conditions set forth in Section 6.1, Section 6.2 and Section 6.3 have been satisfied or waived, or at such other later date and time upon which Buyer and Parent may mutually agree in writing (the "Early Funding Date") (i) Buyer shall deliver in immediately payable funds an amount equal to 50% of the Purchase Price (or, in the event the Working Capital Adjustment has not been finally determined under Section 2.16, 50% of the Estimated Purchase Price) minus the Deposit Escrow Amount to an escrow account (the "Purchase Price Escrow Amount") pursuant to the Escrow Agreement, (ii) Sellers and Buyer shall execute and deliver the Closing Documents and the executed Closing Documents shall be delivered to the Escrow Agent, and (iii) all risk of loss, damage, impairment, confiscation or condemnation of the Acquired Assets shall transfer to Buyer. As of the Early Funding Date, Sowood Commodity Partners Fund III LP shall guaranty the payment of the remaining 50% of the Purchase Price (the "Guaranteed Amount") which Guaranteed Amount shall be reduced dollar for dollar by all good and collected cash on deposit in the Funding Account (as defined in the Management Services Agreement) in excess of ten million dollars (\$10,000,000) on the date giving rise to a breach by Buyer of any of the conditions to Final Closing. Sellers and Buyer also agree that Sellers shall promptly seek Bankruptcy Court approval to enter into one or more Debtor-in-Possession financing agreements (each a "DIP Facility") with Buyer (or another lender reasonably acceptable to Sellers) pursuant to Bankruptcy Code Section 364 on terms mutually and reasonably acceptable to each of Buyer and Sellers in an amount of up to twenty five million dollars (\$25,000,000), the proceeds of which shall be advanced from time to time by Buyer or such lender in accordance with such financing agreements (as defined in the Management Services Agreement).

Section 2.16 Working Capital Adjustment.

(a) No later than thirty (30) days following the date of the entry of the Sale Order, Parent shall prepare and deliver to Buyer a statement of the net working capital as of 12:01 a.m. on the Early Funding Date, including a calculation of the Working Capital Adjustment, prepared in accordance with the definition of "Working Capital Adjustment" and consistent with the preparation of Exhibit G (the "Working Capital Statement"), signed by the chief financial officer of Parent, who shall certify that such statement was prepared in good faith from the books and records of the Business.

(b) Buyer shall have a period of up to thirty (30) days from the receipt of the Working Capital Statement to review the Working Capital Statement, during which period Parent shall make available to Buyer all relevant books and records in the Sellers' possession or control and all personnel with knowledge of information relevant to the determination of Working Capital Adjustment. If as a result of such review, Buyer disagrees with the Working Capital Statement, Buyer shall deliver to Parent a written notice of disagreement (a "Dispute Notice") prior to the expiration of such thirty (30) day review period setting forth in reasonable detail the basis for such dispute and setting forth Buyer's calculation of the Working Capital Adjustment or a detailed explanation of the additional information Buyer needs from Parent to prepare such a calculation.

(c) If Buyer does not disagree with the Working Capital Statement, Buyer shall deliver a written statement to Parent within such thirty (30) day period accepting the Working Capital Statement (an "Acceptance Notice"), in which case Parent's determination of the Working Capital Adjustment as shown on the Working Capital Statement shall be final and binding on the parties, effective as of the date on which Parent receives the Acceptance Notice. If Buyer does not deliver a Dispute Notice or an Acceptance Notice within such thirty (30) day period, then Parent's determination of the Working Capital Adjustment as shown on the Working Capital Statement shall be final and binding on the parties, effective as of the first Business Day after the expiration of such thirty (30) day period.

(d) If Buyer delivers a Dispute Notice to Parent in a timely manner, then Buyer and Parent shall attempt in good faith to resolve such dispute within thirty (30) days from the date of the Dispute Notice. If Buyer and Parent cannot reach agreement within such thirty (30) day period (or such longer period as they may mutually agree), then the dispute shall be promptly referred to an independent accounting firm of national reputation reasonably mutually acceptable to Buyer and Parent (the "Independent Auditor") for binding resolution and Parent and Buyer shall enter into a customary engagement letter with the Independent Auditor at the time the remaining issues in dispute are submitted to the Independent Auditor. The Independent Auditor shall determine the Working Capital Adjustment in accordance with the provisions of this Agreement as promptly as may be reasonably practicable and shall endeavor to complete such process within a period of no more than sixty (60) days. The Independent Auditor's determination of the Working Capital Adjustment shall not vary from the Working Capital Adjustment set forth in the Working Capital Statement by more than the amount in dispute. The Independent Auditor may conduct such proceedings as the Independent Auditor, in its sole discretion, determines will assist in determining the Working Capital Adjustment and shall

deliver to Buyer and Parent concurrently a written opinion setting forth a final determination of the Working Capital Adjustment calculated in accordance with the provisions of this Agreement. The determination of the Independent Auditor shall be final and binding on Buyer and the Sellers, effective as of the date the Independent Auditor's written opinion is received by Buyer and Parent. The Sellers, on the one hand, and Buyer, on the other hand, shall each be responsible for a portion of the costs and expenses of the Independent Auditor, based on the decision of the Independent Auditor equal to the Independent Auditor's total fees and costs multiplied by a fraction, the numerator of which is the amount of the disputed portion of the Working Capital Adjustment that the Independent Auditor concluded was correct and the denominator is the total amount of the Working Capital Adjustment that is in dispute. For example, if the Buyer contends that Working Capital should be reduced by \$1,000,000 more than Parent contends it should be reduced and the Independent Auditor determines that \$200,000 of the disputed portion of the reduction is appropriate, the Sellers will pay 20% of the Independent Auditor's fees and costs and the Buyer will pay 80% of the Independent Auditor's fees and costs. Each of the parties shall bear its own legal, accounting and other fees and expenses of participating in such dispute resolution procedure. The Working Capital Adjustment as finally determined pursuant to Section 2.16(c) or Section 2.16(d) is referred to as the "Final Working Capital Adjustment."

(e) If the Final Working Capital Adjustment has been determined on or prior to the Closing Date, the Purchase Price shall be increased or decreased, as applicable, by the amount of the Final Working Capital Adjustment. If the Final Working Capital Adjustment has not been determined in accordance with the provisions of this Section 2.16 on or prior to the Closing Date, then (i) for purposes of determining the amount payable to the Sellers at the Closing, the Purchase Price shall be increased or decreased, as applicable, by an agreed upon good faith estimate of the Working Capital Adjustment or, if the Parent and the Buyer cannot agree on the amount of such an estimate, the amount payable to the Sellers at the Closing pursuant to Section 2.10(a)(i) shall utilize an assumed Working Capital Adjustment of \$9,500,000 and (ii) for purposes of determining the amount payable to the Sellers at the Final Closing, the Purchase Price shall be increased or decreased, as applicable, by the amount of the Final Working Capital Adjustment.

(f) Any adjustments to the amounts payable to the Sellers pursuant to this Section 2.16 shall be treated by the parties as adjustments to the Purchase Price for all purposes.

Section 2.17 As is, Where is Nature of Sale. The sale of the Acquired Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by Sellers, their agents or their estates, except to the extent explicitly set forth in the Agreement or in any of the Transaction Documents.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as otherwise disclosed to Buyer in a schedule attached hereto and made a part hereof (as modified or supplemented from time to time by Sellers prior to the Closing (the "Seller Disclosure Schedule")), Sellers, jointly and severally, represent and warrant to Buyer as follows (it being understood that, except for the representations and warranties contained in this

Article III or in any of the Transaction Documents, no Seller makes any representation or warranty, express or implied, with respect to Sellers, the Business or otherwise pursuant to or in connection with this Agreement):

Section 3.1 Organization, Standing and Power. Each Seller is a corporation duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation, has all requisite power and authority to own, lease and operate its properties and to carry on the Business as now being conducted, and is duly qualified to do business as a foreign corporation and in good standing to conduct business in each jurisdiction in which the business it is conducting, or the operation, ownership or leasing of its properties, makes such qualification necessary, other than in such jurisdictions where the failure so to qualify would not, individually or in the aggregate, result in a Material Adverse Effect. Except as set forth on Seller Disclosure Schedule 3.1, none of the Sellers has any other subsidiary or Affiliate other than the other Sellers, and each Person set forth on Seller Disclosure Schedule 3.1 has no material assets necessary to the operation of the Business.

Section 3.2 Authority; No Violations; Consents and Approvals.

(a) Subject to approval of the Sale Order by the Bankruptcy Court, each Seller has the requisite corporate power and authority to enter into the Transaction Documents and to consummate the transactions contemplated by the Transaction Documents. Subject to approval of the Sale Order by the Bankruptcy Court, the execution and delivery of the Transaction Documents and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate action on the part of each Seller. This Agreement has been, and each of the Transaction Documents shall be, duly executed and delivered by each Seller, and, subject to the entry and effectiveness of the Sale Order, each shall constitute valid and binding obligations of each Seller, enforceable in accordance with its terms and conditions.

(b) Except as otherwise set forth on the Seller Disclosure Schedule 3.2(b), the execution and delivery of the Transaction Documents and the consummation of the transactions contemplated thereby by each Seller will not conflict with, or result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any material obligation or the loss of a material benefit under, or the creation of any Lien, upon any of the Acquired Assets except for Permitted Liens, pursuant to (i) any provision of the certificate of incorporation or by-laws of any Seller or (ii) applicable Law, except for such conflicts, violations, defaults or losses under clause (i) and (ii) that would not, individually or in the aggregate, result in a Material Adverse Effect, or that arise, are excused by or are unenforceable, as a result of Sellers' filing of the Petitions or pursuant to the Bankruptcy Code.

(c) No consent, approval, order or authorization of, or registration, declaration or filing with, notice to, or permit from any Governmental Authority or Person is required by or with respect to any Seller in connection with the execution and delivery of any of the Transaction Documents by each Seller or the consummation by each Seller of the transactions contemplated hereby or thereby, except for (i) the filing of a notification and report form under the HSR Act, and the expiration or termination of the applicable waiting period thereunder; (ii) notifications or

filings required pursuant to the WARN Act, if any; (iii) the approval of the Bankruptcy Court and the entry by the Bankruptcy Court of the Sale Order; (iv) the required consents under the Permits, which consents are listed on Seller Disclosure Schedule 3.2(c) including, but not limited to, the FCC Consents and State PUC Consents; and (v) required consents or approvals of third parties to the Assumed Contracts, which consents are listed on Seller Disclosure Schedule 3.2(c).

Section 3.3 Title to Transferred Assets.

(a) Each Seller has, and at the Closing, Buyer will receive, good and marketable title to the Acquired Assets, free and clear of any Liens and other interests other than Permitted Liens.

(b) Seller Disclosure Schedule 3.3(b) sets forth a list of all Real Property leased by each Seller (the "Leased Property") and includes an accurate description thereof. As of the Closing Date, each Seller shall have the exclusive right to occupy and use all of its Assumed Leased Property and shall be the sole person in possession of the premises of all Assumed Leased Property, and each lease related to the Assumed Leased Property shall be valid, unencumbered (except for Permitted Liens) and, as of the Closing Date, except as set forth on Seller Disclosure Schedule 3.3(b), without any default thereunder by such Seller or, to the Knowledge of Sellers, by the lessor. After the Closing or Final Closing, as applicable, Buyer shall have the exclusive right to occupy and use all Assumed Leased Property in accordance with the terms of the applicable lease relating thereto

(c) Except as set forth on Seller Disclosure Schedule 3.3(c), (i) no Seller has entered into any presently effective Contracts regarding the sale, conveyance, transfer or disposition of the Assumed Leased Property (except for this Agreement) and (ii) no Seller has granted to anyone, and no one possesses, any option to purchase or right of first refusal to purchase the Assumed Leased Property.

(d) The Acquired Assets constitute substantially all of the assets necessary for the conduct of the Business as presently conducted by the Sellers.

(e) The Owned Real Property is not used in the Business.

Section 3.4 Compliance with Applicable Laws. The Business, including its operations, practices, processes, products and services and all other aspects of the Business is in compliance, in all material respects, with all applicable Laws. Except for the matters set forth on Seller Disclosure Schedule 3.5, there are no claims pending, or to the Knowledge of the Sellers, threatened, nor has any of the Sellers received any written notice, or to the Knowledge of the Sellers any oral notice, regarding any violations of any regulations or orders enforced by any authority which, if decided adversely to the Sellers, would be reasonably likely to have a Material Adverse Effect. Each Seller holds all Permits necessary for the lawful conduct of its business and is in compliance with the terms thereof, except for the Bankruptcy Cases or where the failure to hold or comply with any such Permits would not, individually or in the aggregate, result in a Material Adverse Effect.

Section 3.5 Litigation. Except as set forth on Seller Disclosure Schedule 3.5, there is no investigation, suit, action, demand or proceeding pending or, to the Knowledge of Sellers, threatened against any Seller by any Governmental Agency, court, tribunal, board, arbitrator or mediator, nor is there any judgment, decree, unfunded settlement, conciliation agreement, letter of deficiency, award, temporary restraining order, injunction, rule or order of any Governmental Agency, court, tribunal, board, arbitrator or mediator outstanding against any Seller, except for such investigations, suits, actions, demands or proceedings that would not be reasonably likely to result in liability of any Seller in excess of \$50,000 in any case or \$1,000,000 in the aggregate.

Section 3.6 Taxes. Except (i) as set forth in Seller Disclosure Schedule 3.6; (ii) with respect to tax liabilities that arose in the ordinary course of business prior to the Petition Date and have not been paid as a result of the filing of Sellers' Bankruptcy Case; and (iii) for matters that would not reasonably be expected to have a Material Adverse Effect, to the Sellers' Knowledge, (a) all Tax Returns have been timely filed (taking into account any extension of time to file granted or obtained), (b) all Taxes due and payable on or prior to the date hereof have been paid or will be timely paid, (c) no Seller has received from any Taxing Authority any written notice of proposed adjustment, deficiency or underpayment of any Taxes relating to the Business or the Acquired Assets, other than a proposed adjustment, deficiency or adjustment that has been satisfied by payment or settlement or withdrawn; (d) no Taxing Authority has raised any material issues relating to Taxes that relate to the Acquired Assets or the Business for which a material Lien could be imposed upon any Acquired Asset after the Closing; and (e) no Seller is in material violation (and with notice or lapse of time, or both, would not be in violation) of any applicable Law relating to the payment or withholding of Taxes.

Section 3.7 Employment Agreements. Except as set forth on Seller Disclosure Schedule 3.7, there are no management, employment, consulting or other agreements, whether oral or in writing, to which a Seller is a party or is otherwise bound that is an Assumed Contract and provides for (a) the employment of any Person or providing for retention of management, executive or consulting services, or (b) the payment or accrual of any Employee Termination Obligations.

Section 3.8 Collective Bargaining Agreements and Labor Matters. None of the Sellers is a party to any collective bargaining agreement. Except as set forth on Seller Disclosure Schedule 3.8, as of the date hereof, none of the Sellers (a) is engaged in or has previously engaged in any unfair labor practices, has any unfair labor practice charges or complaints before the National Labor Relations Board pending or, to the Knowledge of Sellers, threatened against it or (b) has any written notice of any charges, complaints or proceedings pending or, to the Knowledge of Sellers, threatened against it before the Equal Employment Opportunity Commission, Department of Labor or any other Governmental Authority responsible for regulating employment practices.

Section 3.9 Intellectual Property. Sellers own or are licensed or otherwise have the right to use all of the Intellectual Property necessary to carry on the Business as currently conducted, except where the failure to so own, license or otherwise have the right to use such Intellectual Property would not, individually or in the aggregate, result in a Material Adverse Effect, and the consummation of the transactions contemplated hereby will not result in the

material loss of any such rights. All Trademark registrations and Patents are, to the Knowledge of Sellers, valid and subsisting and all necessary fees and filings required to be paid prior to the date of this Agreement have been paid or will be paid by the Closing Date, except where the failure to be valid or subsisting or the failure to pay or make such fees and filings would not, individually or in the aggregate, result in a Material Adverse Effect. Except as set forth on Seller Disclosure Schedule 3.9, Sellers have not received any written notice of infringement of or conflict with any third party's intellectual property. Except as set forth on Seller Disclosure Schedule 3.9, to the Knowledge of Sellers, there are no material infringements of or conflicts with the rights of others with respect to the use of, or the rights by others with respect to, any Intellectual Property. To the Knowledge of Sellers, no third party is materially infringing or otherwise materially violating any Intellectual Property owned by any of Sellers.

Section 3.10 Equipment. Parent or one of the Subsidiary Sellers has good title to, or holds pursuant to valid and enforceable leases, all of the tangible properties and assets of the Parent and the Subsidiary Sellers (excluding Real Property) that are material to the conduct of the Business, with only such exceptions as constitute Permitted Liens. Such tangible properties and assets of Parent and the Subsidiary Sellers are in good operating condition and repair, reasonable wear and tear excepted, except where the failure to be in such condition or repair would not, individually or in the aggregate, result in a Material Adverse Effect.

Section 3.11 Contracts.

(a) Seller Disclosure Schedule 3.11(a) contains a list of all (i) non-competition agreements or any other agreements or obligations that purport to materially restrict Sellers from competing in any material line of business, (ii) agreements that limit the ability of Sellers to own, operate, sell, transfer, pledge or otherwise dispose of any assets having aggregate value in excess of \$2,500,000, (iii) agreements or arrangements that contain any severance pay or post-employment liabilities or obligations, other than as required under law or agreements or arrangements not requiring payments of more than \$50,000 individually, (iv) each contract or agreement that is executory in whole or in part and involves expenditures or receipts of any Seller in excess of \$100,000 per year or \$300,000 over the remaining term of the agreement; (v) each lease, rental or occupancy agreement, installment and conditional sale agreement, and any other contract or agreement affecting the ownership of, leasing of, title to or use of any Assumed Leased Property; and (vi) each contract or agreement with any director, officer or employee of any Seller (collectively, the "Material Contracts").

(b) Complete, true and correct copies of each Material Contract (or written summaries of the terms of any such oral contract) have been delivered or made available to Buyer prior to or contemporaneously with the execution of this Agreement.

(c) Except as set forth on Seller Disclosure Schedule 3.11(c), no notice to, or consent or approval by, any third party is required under any of the Material Contracts as a result of or in connection with the execution, delivery, or performance of this Agreement or the consummation of the transactions contemplated hereby.

Section 3.12 Insurance. Seller Disclosure Schedule 3.12 sets forth as of the date of this Agreement a true, correct and complete list of all title, fire, general liability, malpractice liability, theft and other forms of property and casualty insurance and all fidelity bonds held by Sellers that are material to the Business.

Section 3.13 Sellers' Brokerage Agreements. Except as set forth on Seller Disclosure Schedule 3.13, no Seller has entered into any Contract with any Person engaging such Person as an investment banker, broker, finder, financial advisor and who would be entitled to any fee or commission in connection with the transactions contemplated by this Agreement. Buyer shall not be liable for any fee, commission or other amount due to such Person.

Section 3.14 Sellers' Financial Statements. To Sellers' Knowledge, (i) the audited balance sheet of the Business at December 31, 2004 and related statements of income and cash flow for the Business for the fiscal year then ended, and (ii) the unaudited balance sheet of the Business at April 30, 2005 and the related statements of income and cash flow for the Business for the four month period then ended, each fairly present, in all material respects, Sellers' financial condition and operating results, as of the dates of such statements, and have been prepared in conformity of GAAP, where applicable (except that the unaudited financial statements do not contain all footnotes required by GAAP and are subject to all normal year-end audit adjustments).

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

Except as otherwise disclosed to Sellers in a schedule attached hereto and made a part hereof (as modified or supplemented from time to time by Buyer prior to the Closing (the "Buyer Disclosure Schedule")), Buyer represents and warrants to Sellers as follows (it being understood that, except for the representations and warranties contained in this Article IV, Buyer does not make any representation or warranty, express or implied, with respect to Buyer or otherwise pursuant to or in connection with this Agreement):

Section 4.1 Organization and Good Standing. Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware with all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as currently conducted. Buyer is duly qualified to do business as a foreign limited liability company and in good standing to conduct business in each jurisdiction in which the business it is conducting, or the operation, ownership or leasing of its properties, makes such qualification necessary, other than in such jurisdictions where the failure so to qualify would not, individually or in the aggregate, result in a material adverse effect on Buyer or its business.

Section 4.2 Authorization of Agreement.

(a) Buyer has all requisite corporate power and authority to enter into the Transaction Documents and to consummate the transactions contemplated by the Transaction Documents. The execution and delivery by Buyer of the Transaction Documents and the consummation of the transactions contemplated thereby have been duly and validly authorized

by all requisite corporate action on the part of Buyer. This Agreement has been, and each of the Transaction Documents shall be, duly executed and delivered by Buyer and, subject to the entry and effectiveness of the Sale Order, each shall constitute a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

(b) The execution and delivery of the Transaction Documents and the consummation of the transactions contemplated thereby by Buyer will not conflict with, or result in any violation of, or default (with or without notice or lapse of time, or both) under (i) any provision of the certificate of incorporation or by-laws of Buyer, (ii) the provisions of any agreement to which Buyer or any of its Affiliates is a party or (iii) Applicable Law.

(c) No consent, approval, order or authorization of, or registration, declaration or filing with, notice to, or permit from, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of any of the Transaction Documents by Buyer or the consummation by Buyer of the transactions contemplated thereby, except for (i) the filing of notification and report form under the HSR Act, and the expiration or termination of the applicable waiting period thereunder, (ii) any FCC Consents or State PUC Consents as required by applicable Laws; and (iii) the entry by the Bankruptcy Court of the Sale Order.

Section 4.3 No Financing; Financial Ability. Buyer has immediate cash available necessary for the acquisition of the Acquired Assets and to perform its obligations under this Agreement.

Section 4.4 Buyer's Brokerage Agreements. Except as set forth on Buyer Disclosure Schedule 4.4, none of Buyer or its Affiliates has entered into any Contract with any Person engaging such Person as an investment banker, broker, finder, financial advisor and who would be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

Section 4.5 Litigation. There is no suit, action or proceeding pending or, to the Knowledge of Buyer, threatened against Buyer, nor is there any judgment, decree, unfunded settlement, conciliation agreement, letter of deficiency, award, temporary restraining order, injunction, rule or order of any Governmental Authority outstanding against Buyer, that may (a) affect, challenge or impair the ability of Buyer to perform its obligations under this Agreement or the Transaction Documents or the consummation of the transactions contemplated hereunder or thereunder or (b) delay or prevent the consummation of any of the transactions contemplated by this Agreement or the Transaction Documents, nor is there any judgment, decree, injunction, rule or order of any Governmental Agency, arbitrator or mediator outstanding against Buyer or any Affiliate thereof having, or which could be expected to have, any effect referred to in clause (a) or (b) above.

Section 4.6 Certain Investment Representations. Buyer is purchasing the Shares for its own account with the present intention of holding such securities for investment purposes and not with a view to or for sale in connection with any public distribution of such securities in violation of any federal or state securities laws. Buyer is an "accredited investor" as defined in

Regulation D promulgated by the Securities and Exchange Commission under the Securities Act. Buyer acknowledges that it is informed as to the risks of the transactions contemplated hereby and of ownership of the Shares. Buyer acknowledges that the Shares have not been registered under the Securities Act or any state or foreign securities laws and that the Shares may not be sold, transferred, offered for sale, pledged hypothecated or otherwise disposed of unless such transfer, sale, assignment, pledge, hypothecation or other disposition is pursuant to the terms of an effective registration statement under the Securities Act and is registered under any applicable state or foreign securities laws or pursuant to an exemption from registration under the Securities Act and any applicable state or foreign securities laws.

ARTICLE V COVENANTS

Section 5.1 Conduct of the Business.

(a) Operating Covenants. During the period from the date hereof to the effectiveness of the Management Services Agreement, each Seller covenants that (except as consented to in writing by Buyer, which consent shall not be unreasonably withheld, and except as required by the applicable provisions of the Bankruptcy Code and any orders of the Bankruptcy Court) it shall either satisfy, or cause to be satisfied, the following:

(i) Each Seller shall conduct the Business only in the ordinary and normal course consistent with past practice, and no Seller shall enter into, amend or renew any Contracts relating to the Business involving more than \$100,000.00 per year or \$300,000.00 over the term of the Contract or terminate or reject any Assumed Contract;

(ii) Each Seller shall not grant any increase in any benefit under any Employee Benefit Plan. Except as required by Law, as approved by the Bankruptcy Court or pursuant to the terms of any existing Employee Benefit Plan or Contract, each Seller shall not grant any severance or termination pay to, or enter into any employment or severance agreement with, any director, officer, or employee thereof, either individually or as part of a class of similarly situated persons. Each Seller shall not establish, adopt or enter into any new Employee Benefit Plan or Contract in regard to employees thereof;

(iii) Each Seller shall not merge or consolidate with or into any legal entity, dissolve, or liquidate;

(iv) Each Seller shall use its reasonable efforts, and shall use its reasonable efforts to cause its Affiliates to, maintain the Acquired Assets in good condition;

(v) Each Seller shall not sell, transfer, mortgage, pledge or subject any of the material Acquired Assets to any Lien, except for Permitted Liens; and

(vi) Each Seller shall not commit or agree, whether in writing or otherwise, to take any action prohibited by this Section 5.1(a).

(b) Management Services Agreement.

(i) [intentionally deleted]

(ii) Sellers and Buyer shall enter into a Management Services Agreement substantially in the form of Exhibit F attached hereto (the "Management Services Agreement"), which shall be effective as of the date of receipt of all approvals under the HSR Act and all required FCC Consents, and shall contain certain provisions including, but not limited to, agreements for the operation of the Acquired Assets still owned by any of the Sellers at all times from the date of receipt of all required approvals under the HSR Act and FCC Consents through the Final Closing Date, representations as to authority and ability to operate the Acquired Assets, covenants as to compliance with applicable Laws and Regulations, indemnification of Sellers by Buyer, and such other terms as may be acceptable or necessary to Sellers. Pursuant to and as set forth in the Management Services Agreement, Sellers shall remain in ultimate control of all Acquired Assets still owned by any of the Sellers and Buyer shall provide management and related services to Sellers therefor, subject to the ultimate direction of Sellers and consistent with all applicable Laws and Regulations.

(iii) Subject to Section 5.1(a), commencing as of the date of entry of the Sale Order and continuing until the Management Services Agreement becomes effective, Sellers shall (A) perform all commercially reasonable acts to conduct the operation of the business in the ordinary course and in good faith, (B) provide Buyer with access to all accounting and other financial records and other information and materials in their possession that are necessary or desirable to inform Buyer as to the conduct of the Business and (C) prepare accurate, complete and timely submission of all required applications, reports, correspondence and other documentation, and all regulatory fees and other assessments with all federal and state regulatory commissions relating to the acquisition, use, maintenance, or renewal of the Permits and the operations thereunder, including but not limited to any and all reports, notices, tariffs, forms and other documents required by the FCC and local, state or other federal governmental authorities.

(iv) The parties mutually expect and agree that Buyer may, during the period from the date of entry of the Sale Order until termination of the Management Services Agreement, and subject to the consent and ultimate control of Parent, request that Sellers take actions Buyer reasonably believes are required to optimize the networks and business operations of the Subsidiary Sellers, and to realize reasonably achievable network and operational savings and efficiencies.

(v) From and after the date of receipt of the required approval under the HSR Act and all FCC Consents and the effectiveness of the Management Services Agreement, Buyer and Sellers shall operate the Acquired Assets in accordance with the Management Services Agreement.

Section 5.2 Access; Operation of Acquired Assets.

(a) From the date of this Agreement until the Final Closing Date, each Seller shall, to the extent permitted under applicable Law give to Buyer and its representatives reasonable access, during normal business hours and upon reasonable notice, to such Seller's properties (including the Acquired Assets), books and records relating to the Business, and shall also permit Buyer and its representatives to speak with the non-Seller parties to any Assumed Contracts.

(b) Not later than five (5) days prior to any auction sale to be conducted pursuant to the Bid Procedures Order, Sellers shall deliver to Buyer in a form reasonably satisfactory to Buyer (A) the following additional financial information of Sellers: (i) audited consolidated balance sheets as of December 31, 2004 and December 31, 2003; (ii) audited consolidated statement of operations, statements of cash flows and statements of stockholders' equity for the years ended December 31, 2004, December 31, 2003 and December 31, 2002; (iii) an unaudited consolidated balance sheet as of March 31, 2005 and unaudited consolidated statements of operations, statements of cash flows and statements of stockholders' equity for the three month periods ended March 31, 2005 and 2004; (iv) all other financial information regarding Sellers that is requested by Buyer and necessary to enable Buyer to prepare proforma combined financial statements as required by Article 11 of the Securities Exchange Act of 1934 (the "SEA"); and (v) any other information with respect to the Sellers that is requested by Buyer and necessary for Buyer to satisfy the requirements of the Securities and Exchange Commission with respect to any pending registration and (B) the consent of Sellers' independent auditor to the inclusion of the foregoing financial statements of Sellers, including the reports of the independent auditor, into Buyer's pending and effective registration statements. The foregoing financial information and independent auditors report shall (x) be prepared in accordance with United States GAAP, (y) meet the financial statement and footnote disclosure requirements of Regulation S-X promulgated under the SEA (excluding financial statement schedules); and (z) properly reflect for all periods the Sellers' Canadian operations and European operations as discontinued operations, if such accounting treatment is appropriate. Sellers shall not intentionally withhold any information in the Sellers' possession or control required to be delivered pursuant to Section 5.2(b). Notwithstanding the foregoing, if Buyer fails to terminate this Agreement pursuant to Section 7.1(a)(viii) prior to the beginning of any auction sale pursuant to the Bid Procedures Order, this section shall terminate in its entirety and neither party shall have any rights arising from this section.

(c) Nothing contained in this Section 5.2 shall obligate any Seller to breach any duty of confidentiality owed to any Person whether such duty arises contractually, statutorily or otherwise.

Section 5.3 Antitrust Notification. Parent and Buyer shall, as promptly as practicable, but in no event later than ten Business Days following the date of this Agreement, file with the FTC and the DOJ the notification report form, if any, required for the transactions contemplated hereby and submit at the reasonably earliest practicable date any supplemental information requested in connection therewith pursuant to the HSR Act. Buyer shall pay when due all the HSR filing fees due with each such filing. Parent and Buyer shall as promptly as practicable make such other filings as are necessary or advisable in other jurisdictions in order to comply with all applicable Laws relating to competition and shall promptly provide any

supplemental information requested by any applicable Governmental Authority relating thereto. Parent and Buyer shall cooperate with each other and furnish to the other such necessary information and reasonable assistance as the other may request in connection with its preparation of any filing or submission that is necessary under the HSR Act or such other applicable Law or requested by the FTC, DOJ or any other Governmental Authority. Parent and Buyer shall keep each other apprised of the status of any communications with, and any inquiries or requests for additional information from, the FTC, the DOJ or any other Governmental Authority and shall comply promptly with any such inquiry or request. Parent and Buyer shall use their respective commercially reasonable best efforts to obtain any clearance required under the HSR Act or such other applicable Law to consummate the purchase and sale of the Acquired Assets. If, as a condition to obtaining an agreement from the FTC, DOJ or any other Governmental Authority not to seek an injunction preventing or delaying the consummation of the purchase and sale of the Acquired Assets or to satisfy any condition to a consent or approval of the FTC, DOJ or any other Governmental Authority necessary for the consummation of the purchase and sale of the Acquired Assets, such Governmental Authority shall require the divestiture (or the execution of a consent decree contemplating such a divestiture) of any asset of Buyer, Buyer shall, at the request of Parent, effect promptly such divestiture or execute such consent decree.

Section 5.4 Notification. Prior to the Final Closing, Parent shall notify Buyer, and Buyer shall notify Parent, of any litigation, arbitration, appeal or administrative proceeding pending, or, to its knowledge, threatened against any Seller or Buyer, as the case may be, which challenges the transactions contemplated hereby.

Section 5.5 Injunctions. Prior to the Final Closing, if any Governmental Authority issues or otherwise promulgates any injunction, stay, decree or similar order which prohibits the consummation of the transactions contemplated hereby, the parties will use their respective reasonable efforts to have such injunction dissolved or otherwise eliminated as promptly as possible and, prior to or after the Final Closing, to pursue the underlying litigation diligently and in good faith.

Section 5.6 Payments Received. Each Seller and Buyer, after the Closing, shall hold and shall promptly transfer and deliver to the other, from time to time as and when received by them, any cash or checks with appropriate endorsements (using their commercially reasonable efforts not to convert such checks into cash), or other property that they may receive on or after the Closing which properly belongs to the other party; provided, however, that the Management Services Agreement shall govern the deposit and use of cash received by any of the Sellers during the Term of the Management Services Agreement.

Section 5.7 Other Matters. From and after the Closing Date, each Seller will promptly refer all inquiries with respect to ownership of the Acquired Assets or the Business to Buyer. In addition, each Seller will execute such documents and as Buyer may reasonably request from time to time to evidence transfer of the Acquired Assets to Buyer.

Section 5.8 Additional Agreements. Subject to the terms and conditions of this Agreement, each of the parties hereto will use its commercially reasonable efforts to do, or cause to be taken all action and to do, or cause to be done, all things necessary, proper, or advisable

under applicable Law to consummate and make effective the transactions contemplated by this Agreement, including, the fulfillment of the conditions set forth in Article VI to the extent that the fulfillment of such is within the control of such party. If at any time after the Closing Date, any further action is necessary or desirable to carry out the purposes of this Agreement, the parties to this Agreement and their duly authorized representatives shall use commercially reasonable efforts to take all such action.

Section 5.9 Preservation of Books and Records. Buyer shall preserve the books and records constituting a part of the Acquired Assets for a period of six years from the Closing Date, or for such longer period as is required by any applicable Law, and will permit each Seller (and such Seller's successors or assigns) or its authorized representatives (including any creditors' committees under the Bankruptcy Case) reasonable access thereto, including making any copies at such Seller's expense, in connection with the affairs of such Seller relating to its matters. Such records may be sought under this Section 5.9 for any reasonable purpose, including, without limitation, to the extent reasonably required in connection with the audit, accounting, tax, litigation, federal securities disclosure or other similar needs of the party seeking such records.

Section 5.10 Employment Matters.

(a) Buyer shall make offers of employment prior to the Final Closing Date (to be effective as of the Final Closing Date) to substantially all of the employees of the Sellers (including employees absent from work due to short term and long-term disability, sick leave, military leave, vacation leave or other employer approved absences of short duration including but not limited to absences under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") and the Family and Medical Leave Act of 1993 ("FMLA")), whose employment relates primarily to the Business and who are employed by the applicable Seller as of the Final Closing Date ("Employees"). Subject to any Assumed Contracts, Buyer shall offer employment to all of such Employees on an "at will" basis with the same base salary and annual cash bonus opportunity as in effect for such Employee immediately prior to the Final Closing Date, and otherwise, subject to Buyer's terms, conditions and policies of employment. Employees who accept such offers of employment from Buyer and report to work as active employees shall become employees of Buyer (i) as of the Final Closing Date if they are active employees as of the Final Closing Date; or (ii) as of the Final Closing Date if the Employee later returns to work in accordance with Sellers' policies and applicable Law (the "Transferred Employees"). Neither Buyer nor any of its Affiliates shall be obligated, however, to continue to employ any Transferred Employee for any specific period of time after the Final Closing, other than pursuant to the terms of an Assumed Contract.

(b) For purposes of determining eligibility and vesting (but not for benefits accrual) under any of the Buyer's Employee Benefit Plans (except for the plan described in subsection (c) below) in which a Transferred Employee is eligible to participate immediately after the Final Closing Date, such employee shall be credited with his or her years of service with Sellers. To the extent that any Buyer Employee Benefit Plan in which a Transferred Employee participates after the Final Closing Date provides medical, dental or vision benefits, to the extent allowed under such Employee Benefit Plan, Buyer shall waive any waiting or exclusion period

for participation with respect to such employee and his or her eligible dependents, except to the extent that such waiting period or exclusion period was not satisfied under the corresponding ERISA employee benefit plan of the Seller, and shall further cause all pre-existing condition exclusions and actively at work requirements of such plan to be waived for such employee and his or her covered dependents except to the extent such employee and his or her covered dependents were subject to such requirements under the applicable Employee Benefit Plans, and Buyer shall cause any eligible expenses incurred by such employee on or before the Final Closing Date to be taken into account under such plan for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such employee and his or her covered dependents for the applicable plan year. The foregoing provisions of this Section shall be subject to the provisions of Section 5.10(h).

(c) As of the Final Closing Date, the Transferred Employees shall cease active participation in the VarTec 401(k) Plan (the "Seller Defined Contribution Plan"), and Buyer will take, or cause to be taken, all action as may be necessary to cause such Transferred Employees to become participants in a defined contribution plan established or to be established by Buyer (the "Buyer Defined Contribution Plan") as of such date, subject to any applicable age and service requirements. Service of each Transferred Employee recognized under terms of the Seller Defined Contribution Plan for periods prior to the Final Closing Date shall be credited to the Transferred Employee for eligibility and vesting, but not for benefit accruals, under the Buyer Defined Contribution Plan, subject to the provisions of Section 5.10(h). Transferred Employees who are participants in Seller Defined Contribution Plan will be 100% vested in their accrued benefits and individual account balances under the Seller Defined Contribution Plan as of the Final Closing Date and such amounts shall be distributable to such Transferred Employees in accordance with the applicable provisions of the Seller Defined Contribution Plan.

(d) Richard Vestal of Parent has delivered to Tim Biggio of Parent a memo dated July 8, 2005 and signed by Parent that sets forth certain information related to the employment and severance obligations of Sellers as of the date stated therein, which information is true, correct and complete in all material respects. At the Final Closing Date, Buyer shall assume any and all obligations of Sellers relating to accrued vacation, sick leave, or short term disability, and including leave under USERRA, FMLA and any other employer-approved leave, earned by each Transferred Employee, and Sellers shall have no further liability for same.

(e) The parties agree that Buyer shall be responsible for the continuation coverage of and with respect to any Qualified Beneficiary (as defined in Sections 601, et. seq. of ERISA and Section 4980B of the Code, said provisions referred to herein as "COBRA") with respect to any former employee of a Seller who was an employee of the Business and who experienced a Qualifying Event (as defined in COBRA) prior to the Final Closing Date, and that Buyer shall further be responsible for the notices, extension of continuation coverage, and other compliance with COBRA as to any of the employee or former employee of any Seller who was an employee of the Business and experiences a Qualifying Event at or after the Final Closing Date.

(f) WARN Act.

(i) Sellers shall not, at any time within the 90 calendar day period prior to the Final Closing Date, effectuate a "plant closing" or "mass layoff" as those terms are defined in the Worker Adjustment and Retraining Notification Act of 1988, as amended, ("WARN") or any state law, affecting in whole or in part any of the Employees without notifying Buyer in advance and without complying with the notice requirements and all other provisions of WARN and any state law.

(ii) Buyer agrees that between the Final Closing Date and a period 90 calendar days thereafter it will not, with respect to any of the Transferred Employees, effect a "plant closing" or "mass layoff" as those terms are defined in WARN without complying with the notice requirements and all other provisions of WARN and any state law, provided, that Seller agrees that it shall, upon Buyer's reasonable request, cooperate with Buyer and issue any and all notices and take any other actions required by WARN on behalf of Buyer and which Buyer has approved with respect to any "plant closings" or "mass layoffs" which may be anticipated to occur within the 90 calendar day period following the Final Closing Date.

(g) Buyer and Sellers agree to utilize, or cause their respective Affiliates to utilize, the alternate procedure set forth in Revenue Procedure 2004-53 with respect to wage reporting.

(h) The provisions of Section 5.10(b) and 5.10(c) shall be subject to and contingent upon the following obligations:

(i) Seller shall provide or cause any third party administrator of a Seller Employee Benefit Plan to provide all information reasonably requested by Buyer in order to calculate service for Seller's employees for purposes of determining eligibility and vesting under Buyer's Employee Benefit Plans. Such information shall be provided prior to the Final Closing Date if requested at least 10 days prior to such Final Closing Date or within 10 days of any request if such request is made less than 10 days prior to or after the Final Closing Date;

(ii) On or prior to the Final Closing Date, with respect to any Seller Employee Benefit Plan providing medical, dental or vision benefits, Seller shall provide or cause to be provided to the administrator of the corresponding Buyer Employee Benefit Plan all information reasonably requested by Buyer in order to implement the provisions of Section 5.10(b) relating to waiting periods or exclusions applicable to any Transferred Employee;

(iii) On or prior to the Final Closing Date, Seller shall provide or cause to be provided to Buyer or the administrator of Buyer's Employee Benefit Plan providing medical, dental or vision benefits all information regarding eligible expenses required to be taken into account for purposes of satisfying deductible, coinsurance and maximum out of pocket requirements under the applicable Seller's Employee Benefit Plan to the extent such expense is to be included under Buyer's Employee Benefit Plan pursuant to Section 5.10(b); and

(iv) On or prior to the Final Closing Date, to the extent requested by Buyer, Seller shall take any and all actions necessary or appropriate to transfer to Buyer any

insurance policy providing medical, dental, vision, life, disability or accidental death and disability benefits to employees of the Business who are Transferred Employees, and any such transferred policy shall be an Acquired Asset and all associated liabilities and obligations will be Assumed Liabilities.

Section 5.11 Bankruptcy Proceedings.

(a) This Agreement is entered into by all parties with the express understanding that it is subject to approval of the Bankruptcy Court, and all applicable provisions of the Bankruptcy Code and the Bankruptcy Rules.

(b) The Sellers have filed a motion seeking authority via a Sale Order of the Bankruptcy Court (the "Sale Motion") which Sale Motion, Sale Order and scope and manner of notice thereof shall be reasonably acceptable to Sellers and Buyer, to consummate the transactions contemplated hereunder, including authority to convey and assign the Acquired Assets to the Buyer and to permit the assumption of the Assumed Liabilities by the Buyer pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, substantially in the form of Exhibit B attached hereto (the "Sale Order"). Buyer shall have the right to review and reasonably designate additional parties and/or addresses for notice of the Sale Motion and Sale Order prior to their filing with the Bankruptcy Court. Contemporaneously with seeking the Sale Order, Sellers have filed a motion seeking approval of bid procedures, the terms of which are reasonably acceptable to Sellers, and which promote a competitive bidding and sale process including the Deal Protection Provisions and allowing and authorizing the payment of the Termination Fee as an administrative expense pursuant to section 503 of the Bankruptcy Code (the "Bid Procedures"), pursuant to an Order of the Bankruptcy Court, substantially in the form of Exhibit C attached hereto (the "Bid Procedures Order").

(c) Prior to the Final Closing, Buyer shall, from time to time, designate in writing to Parent those Assumed Contracts which Buyer desires to have assumed by the Sellers and assigned to Buyer by Sellers which designation shall include the maximum Cure Cost for each such Assumed Contract (each, a "Designation"). Sellers shall, promptly after receiving the Designation and upon the satisfaction of the conditions set forth in Section 6.6(a), file a motion pursuant to Section 365 of the Bankruptcy Code to assume and assign the Assumed Contracts identified in the Designation as of the Final Closing Date, and shall use its commercially reasonable efforts to obtain the approval of such assumption and assignment on such terms and conditions designated by Buyer. In the event that any Contract designated by Buyer is not assumable on the terms and conditions set forth in the Designation, including the maximum Cure Costs, then, at Buyer's sole option, such Contract shall not be an Assumed Contract. If any Assumed Contract is required to be either assumed or rejected by any Seller prior to the Final Closing, the Sellers shall promptly notify Buyer in writing of such fact and, at the request of Buyer and upon the entry of a Bankruptcy Court order providing therefor, shall assume any such Assumed Contract; provided, that Buyer shall immediately assume and be liable for the payment of all associated Cure Costs and other claims, debts and obligations arising under such Assumed Contract; further, Buyer shall fully indemnify Sellers on account of such Cure Costs, claims, debts and obligations. If Buyer shall not perform as required in this paragraph to effectuate the requested assignment, Sellers may reject such Contract and shall incur no liability or obligation

on account of such assumption pending such performance of Buyer as required hereunder to effectuate such assignment.

Section 5.12 Deal Protection Provisions. The provisions of this Section 5.12 shall be collectively referred to as the "Deal Protection Provisions":

(a) The Sellers may, at Sellers' option (from and after the Bankruptcy Court's approval of the Bid Procedures) (i) solicit and receive qualified bids pursuant to the Bid Procedures, and (ii) terminate this Agreement pursuant to Section 7.1(a)(vi) and contemporaneously accept a Successful Bid.

(b) If the Bankruptcy Court approves an Alternative Transaction or Parent terminates the Asset Purchase Agreement, dated June 28, 2005, by and between Leucadia National Corporation and the Sellers pursuant to Section 7.1(a)(vii) thereof, Sellers shall be obligated to pay Leucadia National Corporation a termination fee equal to two million (\$2,000,000.00) (the "Termination Fee"). The Termination Fee shall be (i) an allowed administrative expense under Section 503(b) of the Bankruptcy Code, and shall be funded by RTFC (or its assigns) (provided that Sellers may direct the Escrow Agent to pay the Termination Fee from the Deposit Escrow Amount provided such amount is either fully credited against the Purchase Price or returned to Buyer if Buyer is entitled to a refund of the Deposit Escrow Amount); and shall be (ii) payable (x) on the third Business Day following the date that the Bankruptcy Court enters an order approving an Alternative Transaction in accordance with the process and procedures set forth in the Bid Procedures; or (y) within three Business Days following the election by RTFC (or its assigns) to terminate the auction under the Bid Procedures, as applicable.

Section 5.13 Bulk Sales Laws. Buyer waives compliance by Sellers, and Sellers waive compliance by Buyer, with the provisions of any applicable bulk sales, fraudulent conveyance or other law for the protection of creditors.

Section 5.14 Investigation and Agreement by Buyer. Buyer acknowledges and agrees that it has made its own inquiry and investigation into, and, based thereon, has formed an independent judgment concerning, the Acquired Assets, the Assumed Liabilities and the Business and operations of Sellers, and Buyer has been furnished with or given full access to such information regarding the Acquired Assets, the Assumed Liabilities and Business and operations of Sellers. In connection with Buyer's investigation regarding the Acquired Assets, the Assumed Liabilities and Business and operations of Sellers, Buyer and its representatives have received from Sellers certain estimates, results of operations, plans and budget information. Buyer acknowledges and agrees that (i) there are uncertainties inherent in attempting to make such projections, forecasts, estimates, plans and budgets, (ii) Buyer is familiar with such uncertainties, (iii) Buyer is taking full responsibility for its own evaluation of the adequacy and accuracy of all estimates, projections, forecasts, plans and budgets so furnished to it or its representatives and (iv) Buyer will not (and will cause all of its Affiliates and all other Persons acting on its behalf to not) assert any claim or cause of action with respect to such estimates, projections, forecasts, plans and budgets.

Section 5.15 FCC Applications/State PUC Applications.

(a) Within five (5) Business Days after the execution and delivery of this Agreement, the parties hereto shall commence preparing, the necessary applications with the FCC seeking the FCC Consents, and such applications shall be filed with the applicable authorities as soon as reasonably practicable after the Early Funding Date. Each party shall provide the other party with all information necessary for the preparation of such applications on a timely basis, including those portions of such applications which are required to be completed by the first party.

(b) Within five (5) Business Days after the execution and delivery of this Agreement, the parties hereto shall commence preparing the necessary applications with the State PUCs seeking the State PUC Consents, and such applications shall be filed with the applicable authorities as soon as reasonably practicable after the Early Funding Date. Each party shall provide the other party with all information necessary for the preparation of such applications on a timely basis, including those portions of such applications which are required to be completed by the first party. In addition, the parties hereto shall cooperate to make any notice filings required in connection with this matter on a timely basis.

(c) Buyer shall bear all reasonable expenses of Sellers and all expenses of Buyer in connection with the preparation and prosecution of the FCC applications and the State PUC applications. Subject to the terms and conditions of this Agreement, each of the parties hereto shall use its reasonable best efforts to prosecute the FCC applications and the State PUC applications in good faith and with due diligence before the FCC and the State PUCs and in connection therewith shall take such actions as may be necessary or reasonably required in connection with the FCC applications and the State PUC applications, including furnishing to the FCC and the State PUCs any documents, materials, or other information requested by the FCC and the State PUCs in order to obtain the FCC Consents and the State PUC Consents as expeditiously as practicable. In addition, to the extent practicable, the parties hereto shall use their reasonable best efforts to (i) promptly notify each other of any material communication to that party from the FCC, any State PUC or any other party with respect to the FCC applications or the State PUC applications, as applicable, (ii) permit a representative of the other party reasonably acceptable to the first party to attend and participate in substantive meetings (telephonic or otherwise) with the FCC or any State PUC and (iii) permit the other party to review in advance, as reasonable, any proposed written communication to the FCC or any State PUC. No party hereto shall, without the written consent of the other party, knowingly take, or fail to take, any action if the intent or reasonably anticipated consequence of such action or failure to act is, or would be, to cause or materially increase the probability of the FCC or any State PUC not to grant approval of any FCC application or of any State PUC application or materially delay either such approval, to the material detriment of the other party. In the event there are any petitions for reconsideration, appeals or similar filings made seeking to overturn the grant of the FCC Consent or grant of any of the State PUC Consents, or if the FCC or a State PUC seeks to reconsider such grant on its own motion, then the parties shall use their reasonable best efforts, at Buyer's expense, to defend the applicable grants against such actions.

Section 5.16 PARs.

(a) **Acquired PARs.** All PARs related to any ILEC with which Buyer enters into a material commercial relationship (by assumption or otherwise) for the Business prior to Final Closing Date, together with all PARs related to billing and collection agreements that are Assumed Contracts as of the Final Closing Date, shall be "**Acquired PARs**". Acquired PARs shall be an Acquired Asset as of the Final Closing and Buyer shall be free to dispose of Acquired PARs in any manner, including in settlement, compromise or other arrangement with the relevant ILEC. All PARs that are not Acquired PARs shall be "**Retained PARs**". Sellers shall fund any litigation with the ILECs from the Funding Account (as defined in the Management Services Agreement) until the Final Closing Date. Such litigation shall be at the Manager's direction in accordance with and upon the effectiveness of the Management Services Agreement.

(b) **Seller Litigation.** From and after the Final Closing Date, if approved or directed by RTFC, Sellers shall use commercially reasonable efforts to pursue collection of Retained PARs, including through litigation, whether pursuant to Chapter 5 of the Bankruptcy Code or otherwise, and other collection efforts, at Seller's expense funded by the RTFC. If Sellers recover or collect cash proceeds from any such litigation, then Sellers shall apply such proceeds first, to repay costs and expenses (including fees and expenses of counsel) funded by RTFC, and second, to the extent of the remaining proceeds, in equal shares to each of Buyer and RTFC.

(c) **Buyer Directed Litigation.** If RTFC does not approve, direct and fund Sellers to pursue collection of Retained PARs pursuant to clause (b) above by ten (10 Business Days after the Final Closing Date, then Buyer may direct Sellers to, or on its own, pursue such collections at Buyer's expense. Any net cash proceeds from such collection efforts shall be promptly paid by Sellers to Buyer (or retained by Buyer, as appropriate); provided, that Buyer shall have paid in advance all Sellers' out of pocket costs and expenses (including fees and expenses of counsel) related to the collection of such amounts if such claim was pursued by Seller.

ARTICLE VI CONDITIONS TO THE EARLY FUNDING DATE, THE CLOSING AND THE FINAL CLOSING

Section 6.1 Conditions to Obligations of Each Party at the Early Funding Date. The obligations of each party to this Agreement to effect the transactions contemplated hereby to occur at the Early Funding Date shall be subject to the satisfaction or, to the extent permitted by applicable Law, waiver of each of the following conditions:

(a) The Bankruptcy Court shall have approved this Agreement and the transactions contemplated hereby by entry of the Sale Order, which shall be a Final Order;

(b) No temporary restraining order, preliminary or permanent injunction, stay or other order issued by any Governmental Authority preventing the consummation of the

transactions contemplated hereby to occur at the Early Funding Date shall have been filed (and not subsequently rendered moot, dismissed or otherwise disposed of) or be in effect.

Section 6.2 Conditions to Obligation of Buyer at the Early Funding Date. The obligation of Buyer to effect the transactions contemplated hereby to occur at the Early Funding Date and to fund on the Early Funding Date shall be subject to the satisfaction or, to the extent permitted by applicable Law, waiver of each of the following conditions:

(a) (i) Each of the representations and warranties of Sellers set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and (except to the extent such representations and warranties speak expressly as of an earlier date) as of the Early Funding Date as though made on and as of the Early Funding Date; provided, however, that this condition shall be deemed to have been satisfied unless the individual or aggregate impact of all inaccuracies of such representations and warranties would result in a Material Adverse Effect, and Buyer shall have received a certificate signed on behalf of each Seller by an officer of Parent to such effect; and (ii) each Seller shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Early Funding Date; provided, however, that this condition shall be deemed to have been satisfied unless the individual or aggregate impact of such non-performance would result in a Material Adverse Effect, and Buyer shall have received a certificate signed on behalf of each Seller by an officer of Parent to such effect; and

(b) Each Seller shall have delivered to the Escrow Agent the Closing Documents referred to in Section 2.5.

Section 6.3 Conditions to Obligation of Sellers at the Early Funding Date. The obligation of Sellers to effect the transactions contemplated hereby to occur at the Early Funding Date shall be subject to the satisfaction or, to the extent permitted by applicable Law, waiver of each of the following conditions:

(a) Each of the representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and (except to the extent such representations and warranties expressly speak as of an earlier date) as of the Early Funding Date as though made on and as of the Early Funding Date; provided, however, that this condition shall be deemed to have been satisfied unless the individual or aggregate impact of all inaccuracies of such representations and warranties would result in a material adverse effect on the ability of Buyer to consummate the transactions contemplated hereby, and Parent shall have received a certificate signed on behalf of Buyer by an officer of Buyer to such effect. Buyer shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Early Funding Date; provided, however, that this condition shall be deemed to have been satisfied unless the individual or aggregate impact of such non-performance would result in a material adverse effect on the ability of Buyer to consummate the transactions contemplated hereby, and Parent shall have received a certificate signed on behalf of Buyer by an officer of Buyer to such effect; and

(b) Buyer shall have delivered to the Escrow Agent the Closing Documents referred to in Section 2.6.

Section 6.4 Satisfaction of Certain Conditions Upon Early Funding Date. After the Early Funding Date, each of the conditions set forth in Section 6.1, Section 6.2 and Section 6.3 shall be deemed satisfied in their entirety.

Section 6.5 Conditions Precedent to Closing. The obligations of Buyer and Sellers to effect the Closing are subject to the satisfaction at or prior to the Closing Date of the following additional conditions:

(a) All applicable waiting periods under the HSR Act shall have expired or shall have been earlier terminated; and

(b) No temporary restraining order, preliminary or permanent injunction, stay or other order issued by any Governmental Authority preventing the consummation of the transactions contemplated hereby to occur at the Closing shall have been filed (and not subsequently rendered moot, dismissed or otherwise disposed of) or be in effect.

Section 6.6 Conditions Precedent to the Final Closing. The obligations of Buyer and Sellers to effect the Final Closing under this Agreement are subject to the satisfaction or, to the extent permitted by applicable Law, waiver at or prior to the Final Closing Date of each of the following additional conditions:

(a) All FCC Consents and State PUC Consents necessary for the operation of the Business or the transfer of the Non-Transferred Assets from Sellers to Buyer shall have been obtained; provided, however, that this condition shall be deemed satisfied on the last Business Day prior to the first anniversary of the Early Funding Date if, on such date, the Sellers and/or Buyer, as applicable under applicable Law, shall have received the FCC Consents and State PUC Consents in such states in which the Sellers own assets and/or conduct operations that in the aggregate represented 90% of the total revenues of the Sellers for the year ended December 31, 2004 (which revenues for each such state are set forth on Schedule 6.6(a));

(b) The Final Working Capital Adjustment shall have been determined in accordance with Section 2.16; and

(c) No temporary restraining order, preliminary or permanent injunction, stay or other order issued by any Governmental Authority preventing the consummation of the transactions contemplated hereby to occur at the Final Closing shall have been filed (and not subsequently rendered moot, dismissed or otherwise disposed of) or be in effect.

Section 6.7 Condition to Obligation of Buyer at the Final Closing Date. The obligation of Buyer to effect the Final Closing under this Agreement shall be subject to the satisfaction or, to the extent permitted by applicable Law, waiver of Sellers' delivery of the documents referred to in Section 2.7.

Section 6.8 Condition to Obligation of Sellers at the Final Closing Date. The obligation of Sellers to effect the Final Closing under this Agreement shall be subject to the satisfaction or, to the extent permitted by applicable Law, waiver of Buyer's delivery of the documents referred to in Section 2.8.

ARTICLE VII TERMINATION

Section 7.1 Termination.

- (a) This Agreement may be terminated at any time:
 - (i) prior to the Final Closing, by mutual consent of Buyer and Parent;
 - (ii) prior to the Final Closing, by Buyer or by Parent if the Final Closing shall not have occurred by the date that is twelve (12) months after the Early Funding Date; provided, however, that this right to terminate this Agreement shall not be available to any party whose breach of this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date;
 - (iii) on or prior to the Closing Date, by either Buyer or Parent if a Governmental Authority shall have issued an order, decree, or ruling or taken any other action, in each case permanently restraining, enjoining, or otherwise prohibiting the transactions contemplated by this Agreement, and such order, decree, ruling, or other action shall have become a Final Order.
 - (iv) on or prior to the Early Funding Date, by Buyer, if it is not then in material breach of this Agreement, if the conditions set forth in Section 6.2(a) shall have become incapable of fulfillment or cure and shall not have been waived by Buyer or the Early Funding Date has not occurred on or before August 15, 2005;
 - (v) on or prior to the Early Funding Date, by Parent, if no Seller is then in material breach of this Agreement, if the conditions set forth in Section 6.3(a) shall have become incapable of fulfillment or cure and shall not have been waived by Sellers or the Early Funding Date has not occurred on or before August 15, 2005;
 - (vi) by Parent, following approval by the Bankruptcy Court of an Alternative Transaction;
 - (vii) at any time prior to the conclusion of the competitive bid and sale process under the Bid Procedures, by Parent, if the RTFC (or its assigns), as the secured lender to the Sellers, notifies Parent in writing that it desires Parent to terminate the auction under the Bid Procedures; or
 - (viii) At any time prior to the beginning of any auction sale pursuant to the Bid Procedures, by Buyer, if Sellers have failed to provide Buyer with the information that they are obligated to provide pursuant to Section 5.2(b).

Section 7.2 Effect of Termination. Upon termination of this Agreement pursuant to Section 7.1 or otherwise, the undertakings of the parties set forth herein shall forthwith be of no further force and effect; provided, however, that this Section 7.2, Sections 5.12 (Deal Protection Provisions), 8.4 (Expenses), 8.5 (Notices), 8.6 (Confidentiality), 8.7 (Entire Agreement; Amendment; Waiver), Section 8.8 (Severability), 8.9 (Successors and Assigns; Third Party Beneficiaries), 8.10 (Governing Law) and 8.12 (Captions), and the obligations thereunder and the rights and remedies for any breaches of this Agreement occurring prior to such termination, in each case, shall survive any such termination.

Section 7.3 Nonsurvival of Representations, Warranties and Covenants. All of the representations, warranties, covenants and agreements of the respective parties hereto, as contained herein, shall not survive the Early Funding Date, and shall expire, terminate and be of no further force and effect at the time of the Early Funding Date; provided, however, that all covenants and agreements to be performed, in part or in whole, after the Early Funding Date, shall survive the Early Funding Date.

ARTICLE VIII MISCELLANEOUS

Section 8.1 Access to Information. After the Closing Date, each of the parties shall grant to the other such access to their respective financial records and other books and records in their possession related to their conduct of the Business and such cooperation and assistance as shall be reasonably required to enable each of them to complete their legal, regulatory, stock exchange and financial reporting requirements (including any requirements with respect to SEC registration requirements) and to complete their Tax Returns. During the term of the Management Services Agreement, Buyer shall provide reasonable cooperation and assistance to Sellers for the purposes of the Bankruptcy Case. In the event that any such Tax Return becomes the subject of any audit or investigation, each of the parties shall give the other all reasonable cooperation, access and assistance as needed during normal business hours with respect to such financial data and other books and records as may be necessary to enable such first party to defend any such audit or investigation. Each party shall, for a period of six years after the Closing Date plus any additional time during which such party has been advised that there is an ongoing Tax audit or investigation with respect to such periods, keep such financial records and other books and records reasonably accessible and not destroy or dispose of such materials without the written consent of the other party. Each party shall promptly reimburse the other for such other party's reasonable out-of-pocket expenses associated with requests made by such first party under this Section 8.1, but no other charges shall be payable by the requesting party to the other party in connection with such requests.

Section 8.2 Public Announcements. No party will issue any press release or other public announcement with respect to this Agreement or the transactions contemplated hereby without the prior written approval of the other party, except as may be required by such party or its Affiliate under applicable Law or stock exchange rules or regulations or as may be mutually agreed in advance.

Section 8.3 Further Assurances. After the Closing, each party shall take such further actions and execute such further documents as may be necessary or reasonably requested by any other party in order to effectuate the intent of this Agreement and to provide such other party with the intended benefits of this Agreement.

Section 8.4 Expenses. Except as otherwise expressly provided in this Agreement, all costs and expenses incurred by the parties hereto in connection with the consummation of the transactions contemplated hereby shall be borne solely and entirely by the party which has incurred such expenses. In the event of a dispute between or among the parties in connection with this Agreement and the transactions contemplated hereby, each of the parties hereto hereby agrees that the prevailing party shall be entitled to reimbursement by the other party or parties of reasonable legal fees and expenses incurred in connection with any action or proceeding.

Section 8.5 Notices.

(a) All notices, requests, consents, waivers and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been given (i) if transmitted by facsimile, upon written confirmation of delivery, (ii) if personally delivered, upon delivery or refusal of delivery, (iii) if mailed by registered or certified United States mail, return receipt requested, postage prepaid, upon delivery or refusal of delivery, or (iv) if sent by a nationally recognized overnight delivery service, upon delivery or refusal of delivery. All notices, consents, waivers or other communications required or permitted to be given hereunder shall be addressed to the respective party to whom such notice, consent, waiver or other communication relates at the following addresses:

Notices to Sellers

VarTec Telecom, Inc.
2440 Marsh Lane
Carrollton, Texas 75006
Attention: Michael G. Hoffman, President and Chief Executive Officer
Fax: (972) 478-3340

with a copy to:

Vinson & Elkins L.L.P.
3700 Trammell Crow Center
2001 Ross Avenue
Dallas, Texas 75201-2975
Attention: William L. Wallander
Fax: (214) 999-7905

Notices to Buyer:

Comtel Investments LLC
500 Boylston Street, 17th Floor
Boston, Massachusetts 02116
Attention: Megan Kelleher, Esq.
Fax: (617) 603-3509

with copies to:

Latham & Watkins LLP
633 West 5th Street, Suite 4000
Los Angeles, California 90071-2007
Attention: Peter M. Gilhuly
Fax: (213) 891-8763

(b) Either party may at any time change its address for notice from time to time by giving notice to the other party in accordance with this Section 8.5.

Section 8.6 Confidentiality. Buyer and Parent each hereby reacknowledges its respective obligations under any mutual non-disclosure agreement by and between Parent and/or one of its Affiliates and Buyer and/or one of its Affiliates regarding the confidentiality of all Information (as defined therein).

Section 8.7 Entire Agreement; Amendment; Waiver. This Agreement, the Transaction Documents, and the Exhibits, Annexes and Schedules attached to such agreements constitute the entire understanding among the parties hereto with respect to the subject matter hereof, and supersede all other understandings and negotiations with respect thereto. This Agreement may be amended only in a writing signed by all parties hereto. Any provision of this Agreement may be waived only in a writing signed by the party to be charged with such waiver; provided, that a waiver by Parent shall also be deemed a waiver by all Sellers hereunder. No course of dealing among the parties shall be effective to amend or waive any provision of this Agreement.

Section 8.8 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced under applicable Law, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated herein are not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated herein are consummated as originally contemplated to the fullest extent possible.

Section 8.9 Successors and Assigns; Third Party Beneficiaries. Other than the assumption by Buyer of the Assumed Liabilities, nothing expressed or referred to in this

Agreement is intended to or shall be construed to give or to confer upon any Person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. Other than as set forth in this Section 8.9, this Agreement and all of its terms and provisions are for the sole and exclusive benefit of the parties to this Agreement and their successors (including any successor trust or other successor entity of any Seller) and permitted assigns.

Section 8.10 Governing Law.

(a) This Agreement shall be construed in accordance with and governed by the internal laws of the State of Texas (without reference to its rules as to conflicts of law). For so long as any Seller is subject to the jurisdiction of the Bankruptcy Court, all parties hereto irrevocably elect as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court. After all Sellers are no longer subject to the jurisdiction of the Bankruptcy Court, the parties hereto hereby irrevocably submit to the non-exclusive jurisdiction of any federal court sitting in Dallas County, Texas with respect to any action or proceeding arising out of or relating to this Agreement.

(b) Each of the parties hereby waive trial by jury in any claim, action, suit, arbitration, inquiry, proceeding or investigation to which they are parties involving, directly or indirectly, any matter in any way arising out of, related to or in connection with the transactions contemplated in this Agreement.

Section 8.11 Assignment. Buyer may assign its rights in whole or in part under this Agreement: (i) to any Affiliate(s) of Buyer; (ii) to any lender through a collateral assignment of any rights or benefits hereunder; and (iii) in connection with any sale of Buyer or all or substantially all of the assets of Buyer, in each case without Sellers' prior written consent (a "Permitted Assignment"), provided, however, that Buyer shall promptly notify Seller of such Permitted Assignment within two Business Days of such assignment and such Permitted Assignment shall not relieve Buyer of its liabilities and obligations under this Agreement, and, if so authorized by the order of the Bankruptcy Court, Sellers may assign this Agreement in whole or in part, without Buyer's prior written consent, to any entity into which Sellers may merge or consolidate or that acquires substantially all of Sellers' assets or stock.

Section 8.12 Captions. The captions in this Agreement are for purposes of reference only and shall not limit or otherwise affect the interpretation hereof.

Section 8.13 Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile transmission), each of which will be deemed an original and all of which together will constitute one and the same instrument.

Section 8.14 Enforcement of Agreement. Subject to the restrictions contained herein, the parties hereto agree that irreparable damage would occur in the event that any provision of this Agreement was not performed in accordance with its specific terms or was otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions

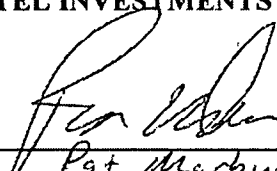
IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be signed in its corporate name by its duly authorized officer, all as of the date first above written.

VARTEC TELECOM, INC.
EXCEL COMMUNICATIONS MARKETING, INC.
EXCEL MANAGEMENT SERVICE, INC.
EXCEL PRODUCTS, INC.
EXCEL TELECOMMUNICATIONS, INC.
EXCEL TELECOMMUNICATIONS OF
VIRGINIA, INC.
EXCEL TELESERVICES, INC.
EXCELCOM, INC.
TELCO COMMUNICATIONS GROUP, INC.
TELCO NETWORK SERVICES, INC.
VARTEC BUSINESS TRUST
VARTEC PROPERTIES, INC.
VARTEC RESOURCE SERVICES, INC.
VARTEC SOLUTIONS, INC.
VARTEC TELECOM HOLDING COMPANY
VARTEC TELECOM INTERNATIONAL
HOLDING COMPANY
VARTEC TELECOM OF VIRGINIA, INC.

By: Michael G. Hoffman
Name: Michael G. Hoffman
Title: President & CEO

Signature Page to
Asset Purchase Agreement

COMTEL INVESTMENTS LLC

By: 
Name: Pat Marburger
Title: _____

Sowood Commodity Partners Fund III LP
hereby executes this Agreement to (a)
unconditionally guaranty the full and complete
performance of Comtel Investments LLC's
obligations under this Agreement in an amount
equal to the Purchase Price, net of any amounts
already advanced or deposited and (b) acknowledge
its obligations to satisfy the payment of the Purchase
Price pursuant to Section 2.15.

SOWOOD COMMODITY PARTNERS FUND III LP

By: _____
Name: _____
Title: _____

**Signature Page to
Asset Purchase Agreement**

COMTEL INVESTMENTS LLC

By: _____
Name: _____
Title: _____

Sowood Commodity Partners Fund III LP
hereby executes this Agreement to (a)
unconditionally guaranty the full and complete
performance of Comtel Investments LLC's
obligations under this Agreement in an amount
equal to the Purchase Price, net of any amounts
already advanced or deposited and (b) acknowledge
its obligations to satisfy the payment of the Purchase
Price pursuant to Section 2.15.

SOWOOD COMMODITY PARTNERS FUND III LP

By: Sowood Commodity Partners GP III LP, its General Partner
By: Sowood GP III LLC, its General Partner

By: Megan Kelleher
Name: MEGAN KELLEHER
Title: Principal

Signature Page to
Asset Purchase Agreement

EXHIBIT 2

**TENNESSEE CUSTOMER TOTALS
FOR THE
VARTEC COMPANIES**

CONFIDENTIAL

EXHIBIT 2

**TENNESSEE CUSTOMER TOTALS
FOR THE
VARTEC COMPANIES**

CONFIDENTIAL

Company	Residential	Business
VarTec Telecom, Inc.	36,435	0
Excel Telecommunications, Inc.	12,062	.0
VarTec Solutions, Inc.	0	134